

Contemporary Medical Issues

In Islamic Jurisprudence

Qazi Mujahidul Islam Qasmi



IFA Publication

**Contemporary Medical Issues
In
Islamic Jurisprudence**

Forward

Qazi Mujahidul Islam Qasmi

Editor

Abdul Rashid Agwan

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New Delhi

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Think!!!

In the name of Allah Most Merciful Most Compassionate



Behold! In the creation of the heavens and the earth, and the alternation of the Night and Day, - there are indeed Signs for men of understanding. (Qur'an 3:190-191)



Thus doth Allah show forth Truth and falsehood. For, the scum disappears like froth cast out; while that which is good for mankind remains on the earth. (Qur'an 13:17)



It is not for the Believers to go all along (on an expedition): (It would have been better), if one group go forth to devote themselves from every major group to devote themselves to studies in religion, warn people when they join you, - thus they (may learn) to guard themselves (against evil). (Qur'an 9:122)

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Foreword

1.

Al-Hamdulillah, the first Fiqhi seminar, which was the first of its kind in India, was organised in April 1989 at Hamdard Convention Centre, New Delhi. This seminar enjoyed patronage of the erstwhile president of All India Muslim Personal Law Board late Maulana Sayyed Abul Hasan Ali Nadvi and its general secretary Late Maulana Sayyed Minnatullah Rahamani. May Allah be pleased with both of them! Although some of the eminent experts of Islamic jurisprudence in India, such as Mufti Mehmoodul Hasan, Mufti Nizamuddin, Mufti Abdur Rahim Lajpuri, Maulana Masihullah Khan, etc., could not participate due to unavoidable reasons but their good wishes remained deeply associated with the programme. The key-participants comprised leading experts of the Islamic Jurisprudence in the country and several experts and professionals of contemporary disciplines from India and abroad. All of them rendered the programme a grand success.

2.

The first experiment of its kind, the said seminar not only ended with a happy note but it also paved the way for similar programmes in future. This seminar had provided a rare opportunity for the experts, not only hailing from different schools of thought but also from as discrete disciplines as *tafsir* and gynaecology, to exchange views on one platform analysis of contemporary issues in the Islamic perspective. This programme has succeeded in developing of mutual cooperation of *ulema* and modern experts in the field of research and academic advancement, with a special reference to inter-disciplinary approach in issues having bearing on the understanding and practice of Islam.

This programme has impressed upon the Muslims of contemporary background to give a serious thought to the issues of Islamic *Shariah* and to get benefited by the great treasure of knowledge left behind by the stalwarts of Islamic thought and learned Jurists. And also, to search for themselves the vastness of the Islamic belief system and to take proper care in accepting the ideas. Furthermore, it was implicit in the programme to prepare them to learn from the classical legacy and to recognise the role and place of the Muslim jurists in shaping their views in the context of contemporary issues.

The seminar was also an occasion for the *ulema* to understand that with the emergence and spread of the new socio-economic order in the world this has become indispensable to interact with modern experts, while considering these issues on the anvil of the *Sahriah*, and also, to take insight from them in the comprehensive knowledge of temporal problems. This programme gave an opportunity for the comparatively younger experts of both the classical and modern knowledge to articulate their views in the presence of seasoned masters and to lead towards a better understanding of the future challenges. The seminar has also provided the desired impetus for the formation of a Fiqh academy so that the research, sharing of experiences and formulation on contemporary issues may go on ceaselessly.

The receptivity of the seminar, which it could ensure from the circle of knowledgeable, has greatly encouraged the organisers and the well-wishers of the programme and has founded a base for similar programmes in future to undertake some other burning issues. May Allah sustain the spirit and constancy of the pertaining efforts and may it be that this march, which is aimed at seeking truth and knowledge and making endeavours for fruitful research, go on faster and reach to the ultimate goal!

3.

This and the similar seminars are not new in themselves. Rather, they are nothing but a means to imitate golden rules of the stalwarts of classical age, for the advancement of knowledge and to make sincere efforts to search truth, not individually but collectively. During the era of Reverend Umar Farooq, the great empires of Rome and Persia came under the sovereignty of Islam. The contemporary Muslim society had not only merged two super powers into its land but also the two great cultures of the time. However, this raised a lot of ideological and Islamic issues and the Muslims had to face hitherto unknown problems. Then, he adopted a method of collective thinking and strengthened the process of *Ijtihad*, and searched the solution of those problems by mutual consultation. Thereafter, the jurists of Madina continued the process of collective efforts in understanding issues and providing their enhanced remedies. By the time of Imam Abu Hanifah, the boundaries of Islamic State had further expanded. A number of religious schools of thought emerged at that time as a consequence of erstwhile political situation. Fabrication of *Ahadith* in the name of the Prophet (peace be upon him), turned to be a big challenge of the time, which laid to the emergence of the science of *Ahadith* and research in the field of *Ahadith* became an independent discipline in that era. That was the situation, in which Imam Abu Hanifah realised the need for establishing a permanent system of *Ijtihad* and deductions on the injunctions of *Shariah*, with the involvement of experts from various branches of knowledge, to examine concerned issues from all possible angles. For this purpose, he included in his *Majlis-e-Ijtihad* those 40 disciples who were superior to any other ones in their branch of knowledge and encouraged their independent and free deduction.

In our time, in which a lot of new situations have come into existence, ranging from economic to social and political to moral, and the advancement of science, technology and industries have given birth to unprecedented problems, and expanded the limits of

medicine, economy and social ideas to such an extent that it has become almost impossible for one person to get expertise in all these subjects. On the other hand, this reality can hardly be ignored that this is quite unbecoming of the *ulema* and *muftis* to pass on judgements, just by opening the sacred books and classical literature, without understanding the background of emerging problems properly and without distinguishing between the basic and non-basic injunctions, between the ultimate and derived imperatives, between the perennial and temporal commandments, and between the original and customary rituals and practices.

In this situation it has become essential that a group of capable *ulema*, the people of deep insight and contemporary understanding and the sincere jurists should emerge and ponder over the burning issues and juristic problems. Which, on the one hand, may keep in view the Qur'an, Traditions of the Prophet (peace be upon him), Consensus of the experts, and the contribution of ancient jurists and, on the other, it could strive to understand the contemporary problems and issues, necessities of human society and the common interest, from erudite scholars, having ken in the contemporary situations and armed with expertise in modern disciplines. And that, this group may take decisions in the light of deep realisation of injunctions and situations, which serve the need of the present time and may remove unnecessary burden from human beings with proper relaxation and while keeping necessity and need of society in view. The more we succeed in enhancing the process of collective thinking the more we shall be able to solve the problems of the *Ummah* in a better and effective way.

May Allah help us in serving the cherished cause in the best possible way and reward all those who cooperated in this rendering from the best of His rewards!

01-04-2001
New Delhi

Qazi Mjuhidul Islam Qasmi
Secretary General, Islamic Fiqh Academy

Introduction

THE spectacular advancement of medical sciences in the recent past has raised the levels of quality, health, hygiene, expectancy of life and general wholesomeness of people to the hitherto unknown heights. It is natural to expect that, with the advent of new century and of course new millennium, this progress will remain even more splendid. The multiple impact of science and technology, socio-political concepts, formation of mass society, globalisation of trade and culture, professionalism, significance of health and hygiene, and some other crucial factors lead this trend. There can be no denial that biochemistry, biomedicine, genetic engineering, biomedical technology, etc. will constitute a very core sector of future human developments.

However, this unprecedented progress of biomedicine and allied sciences has opened a floodgate of several issues due to political, social, moral and religious bearings of some of the recent developments. And, these issues provide a strong impetus for the contemporary debates, not only in the so-called developing and under-developed countries, which remain more or less passive receivers of the fruits of modernity, but also in the West, from where they have actually germinated. Controversies pertaining to abortion, birth control, transplantation of organs, eugenics, mercy killing, gene mapping, socio-biology, search for immortality, test tube babies, sperm banking, hiring of womb, cloning and so forth have perplexed the modern mind. Positions are being taken on all these issues on the basis of arguments ranging from political to religious and from moral to pragmatic. Apparently, two major categories of people have formed in the world, polarised by these recent advancements. One distinct group pleads for unabated development and unreserved use of biotechnology, whereas other group raises moral overtures from time to time and advocates of guided development and cautious approach in this regard. The

latter apprehends that “although several inventions in the field of gene engineering, reproductive biology, organ transplantation, aging and sexual behaviour are beneficial for mankind but their misuse would certainly create havoc apart from being detrimental to the established social order and moral principles.”¹

Apart from their scientific and technological significance for the modern man, a number of underlying repercussions of these developments have attracted the attention of religious circles in various parts of the world. Either this has been motivated by the fact that some of their utilities are found to be immoral and religiously unacceptable or it may be due to the reason that some of the religious principles need fresh moderation and revision in the light of the new findings. All these fast developments have been seen in the Muslim world initially with awe and hesitation and, then, under the influence of domineering Western culture and confusion, the Muslims have generally joined others in the imitation of the West. However, for quite some time, some of these recent developments, in the field of medical and allied sciences, have been found inconsistent with the Islamic beliefs and practices. Therefore, the learned *ulema* and concerned scholars have been feeling a need to thoroughly discuss pertaining issues from the Islamic viewpoint and to accordingly guide the common man and to remove his difficulties in living a modern life. Consequently, a number of Islamic academies have come into existence in various countries for undertaking new challenges in the field of Islamic Jurisprudence. These academies do not only comprise *ulema* and religious scholars but also the experts of various modern disciplines. Gradually, a plethora of literature and research findings have been brought out in the past decades, focusing on such issues, as a consequence of a series of seminars organised under the aegis of these academies.

¹ A. R. Agwan, Twenty-First Century Scientific Developments: The Response of Muslim Ummah, *Journal of Islamic Science*, 14:1-2, 1998, p.122.

The Indian scene seems to be very promising. Here, the *ulema* have started realising by the late eighties the need for understanding and underlining the problems faced by the Muslims in general and for having grasp on the real intent and concerning Islamic import of those developments, which they feel to be inconsistent with their belief system. As a welcome product of a series of seminars and discussions the Islamic Fiqh Academy (IFA) was formed in 1990. Since then the IFA has undertaken various programmes and activities towards the fulfillment of its cherished objectives. Its first important publication was brought out the same year in the form of proceedings of a seminar organised in April 1989 by the Institute of Objective Studies, which brought on the anvil of Islamic Jurisprudence, two important issues, i.e. Transplantation of Organs and Birth Control. The present rendering is an edited version of some of the very interesting and learned contributions of the concerned *ulema* on the above themes.

The contemporary Muslim jurists have found transplantation of organs as a complex issue. As a matter of fact, several critiques have come into light from time to time in the Muslim circles, discussing the issue of transplantation of organs from a general and Islamic view.¹ The general Muslim concern in this regard may be seen in such views as:

The technique of transplantation of organs is reducing the agonies of mankind in a number of ways, while increasing others. Organ transfer has started removing such human defects as blindness, lameness and failure of internal organs as heart, liver, kidneys and brain. It has increased life expectancy of some people and the working capacity of others. However, this field is also fraught with several legal and moral questions. The

¹ Burhanuddin Sambhali, *Jadid Medical Masail w Qazaya Faqiha Ma'asara* (Arabic).

increasing trend of organ piracy or selling of vital organs under economic compulsions alarms society of grievous repercussions ahead.¹

The issue of transplantation of organs has been thoroughly taken up in the first section of this rendering. It is perhaps the first collective attempt of the Indian *ulema* and scholars to examine the motive, process and impact of transplantation of organs and to formulate guiding principles for the removal of inconsistencies that have crept into the present Islamic life. The questions posed to the contributors, for seeking their opinion, comprised the significance of the damaged and separated part, implications of auto, homo and hetero-transplantation, trading of human organs, organ banking, extent of human dignity, grafting of organs from non-permissible sources and so forth. Whereas, the issues brought into focus such Islamic principles as human dignity, necessity, removal of burden, *mathala* (mutilation of a human organ), preference of lesser evil, proprietary of human body and organs, etc.

The contributors have strived to undertake the issue dispassionately, without getting influenced by the traditional or partisan approaches. However, it is difficult to accept that their efforts succeeded in remaining totally objective. Nevertheless, the valuable contribution of the *ulema* in the seminar was that they have sincerely tried to apply juristic principles on quite a recent problem and have come out with an agreement and formulation on some of the related aspects, as may be noticed in the resolutions of the seminar.

The issue of birth control raises very aggressive, articulate and some times blind perspectives in various parts of the world. The camps in the favour and against appear to be vertically divided in this regard, both in the West and in the East. The attitude of the Catholic Church towards the question of validity of abortion

¹ Agwan, *op cit*, p123.

infuses major heat in the debate and to the extent that inclination of the candidate for American presidency, for and against abortion, may affect prospects at the hustings. The issue becomes even more complicated due to policy frame, necessitated by the exponential rise of human population. The question of moral depravity, implicit in the practice of contraception, also bogs the minds of social thinkers.

In the second section, various aspects of birth control from Islamic point of view came into focus and the contributors have generally strived successfully to discuss the issue from all possible angles, while keeping in mind several intricacies of modern life. They have attempted to respond to various interrelated questions such as status of temporary and permanent methods, motives and objectives of contraception, conditions leading to prohibition or permission of various methods, role of Muslim doctors, etc. The contributors have tried their best to address these and other related issues while deliberating on the subject. Their main posits seemingly emanating from such valued principles of the Islamic Jurisprudence as perpetuity of human race (*nasl*), divine providence, necessity (*zarurat*), removal of burden, preference of lesser evil, contemporary anarchy (*fasad*), alteration of divine creation, timing of union of soul with the foetus, and the like.

The singular contribution of these papers is perhaps their successful advocacy of the rights of foetus (*huquq al-janeen*), a concept that seems unique to the Islamic belief system only. Normally, the foetus is regarded as a non-existent being. However, Islam gives due consideration to the fact that any live foetus is a complete human being and enjoys due rights of respect, survival and care. The plight of conception and human foetus has presently grown to the extent that medical termination of pregnancy has become the worst man-made calamity of our time and no other heinous crime takes away lives of human beings as this. From the reported cases, it becomes evident that more than ten million abortions are legally carried out every year and the number of

illegal termination would presumably be even greater. Just imagine what other man-made or for that matter any natural calamity comes with that huge a toll! In the wake of this gross negligence of human society, the emphasis on the rights of foetus turns into a big issue and the present contributors have rightly focused the same.

Although some of the discussions, that have found place in the text, may be deemed too orthodox. However, the purpose for bringing out this publication should not go out of the sight of the readers. The strength of the present drive comes from the feeling that the academic distance between the *ulema*, representing the classical knowledge, and the scholars and experts, who represent the modern disciplines, should be done away with. This historical lacuna has already caused great loss of the mankind in general and that of the Muslims in particular. The synthesis of the traditional and modern aspects of human experience is precious for a balanced growth of human beings. This can be achieved by generating a feeling of understanding and making the atmosphere conducive, where both the respected *ulema* and esteemed scholars could sit together and resolve the mind-boggling issues amicably. For this, it is important for them to understand mutual positions on each issue. It is intended here that the experts should give a serious thought to the arguments of the contributions in the justification of their positions and then generate a feedback for the latter, so that the pertaining issues might be further understood, developing a balanced Islamic approach towards them.

It is matter of pleasure that the first edition of the rendering has been taken well and it was out of stock for a long time. On the persistent demand from interested quarters the second edition is being published herewith. It is noteworthy that since the publication of the first edition in April 2001, a number of events have only proved veracity of the Islamic viewpoint. The increasing frauds in the claims of human cloning, building world opinion against some of the fruits of gene engineering, heightening misuse of sonography in the detection and killing of female foetus leading

to alarming reduction of sex ratio in many parts of the world, pouring records of side effects of many contraceptive techniques, negative birth rates in a number of European countries mainly caused by aversion to procreative goal of conjugal relation and so on have made it clear that imbalanced and immature human thought can only lead mankind to miseries of unknown nature and at times of uncontrollable consequence. It is regretted that some inadvertent proof mistakes have crept in the first edition, which have been removed now. Moreover at places some linguistic changes have also been done to convey the idea in a better way. It is hoped that the readers will find the present edition lucid, informative and thought provoking towards building a deeper Islamic understanding on contemporary issues appertained to medical issues.

Abdul Rashid Agwan

Section A

Transplantation of Human Organs

Maulana Khalid Saifullah Rahmani
Hyderabad

1. There is no denial regarding existence of affirmative opinion pertaining to the use of non-living materials and the organs of animals for their transplantation in the body of a patient, although it has been debated whether a mutilated human organ could be transplanted on one's own body or not. Both the schools of thought, i.e. the one favouring and the other opposing it, do not consider the same as reversible since a severed body part becomes a dead piece according to the Islamic *Shariah* and should be buried and, hence, reuse of the organ on a human body, as a graft, is an obvious divergence from this scrupulous judgement of the Islamic Jurists:

"فاذا انفصل استحق الدفن كله والإعادة صرف له
عن جهة الاستحقاق".

So when any part of the body is separated from the whole body then it would require a burial similar to that of a corpse and its reuse would deprive that part from this prudent status.

According to Imam Yusuf, it is permissible to go for an autotransplantation as:

"ولا إهانة في استعمال جزء منه"

There is no disgrace in using one's own organ.¹

¹ Badae ul-Sanae 5:132.

In this section, the *fatwa* is on the opinion of Imam Yusuf and the Jurists have generally considered it permissible.

2. However, the real problem arises in case of hetero-transplantation, i.e. grafting of organs of one person on that of other person's body. Those Jurists, who think of permissibility as regards this issue, have those principles of Islamic Jurisprudence in view which allow something forbidden to be considered as permitted on the basis of exigency and indispensability as:

"الضرورات تبيح المحظورات"

"The necessities make the prohibited permissible".

Or on those principles, which consider it proper to provide relaxation in case of difficulties such as:

"المشقة تجلب التيسير"

"Difficulties open the way for ease".

And, also in their view must be those verses of the Holy Qur'an which allow something forbidden to be used due to some compelling situation or concealing of faith from an enemy to save one's life.

3. Those who disapprove of transplantation of organs, although they put forward certain reasons for this, e.g. the impurity of mutilated human organ, its being forbidden (*Haram*), the concept that human beings are not the owners of their own selves, the concept that the human body is a trust from Allah given in one's possession, and so on, but, all these are the same old arguments which the classical Jurists have expounded to give a 'can-be-used' status to a forbidden thing, permitted the use of impure and forbidden things for an indispensable medical treatment, and have allowed exploitation of one's own self for such

uses which do not stand contrary to any explicit injunction of the basic sources of Islam (*Nusus*), i.e. the Qur'an and *Sunnah*.

The actual problem that arises on this issue according to the antagonistic view is the question of preservation of human dignity and the wonderfulness of human existence (*karamat*). The majority of Jurists, who disapprove of grafting, take into account the fact that the permission of any kind would turn into an untoward trading of human organs which is against the honour and dignity of human race. In the books of Jurisprudence, several passages may be found in this regard. For instance:

"وشعر الإنسان والانتفاع به أي لم يجز بيعه
والانتفاع به، لأن الأدمي مكرم غير متبذل، فلا
يجوز أن يكون شئ من أجزائه مهاناً متبذلاً".¹

"Indeed, human hair are not a useable commodity. It is due to the matter of human dignity that it is not permissible to use human hair, nor the part thereof since man is not a sellable commodity. Hence, it is not permissible to disgrace any organ of the human body or use the same".¹

"إن شعر الأدمي لا ينتفع به إكراماً للأدمي قيل
الانتفاع بأجزاء الأدمي لم يجز للنجاسة وقيل:
للكرامة، وهو الصحيح".²

"There is no doubt that the use of human hair for any purpose is not permitted because of human dignity. Some people say that it is not permissible to mutilate human organs. Another statement is that it is due to the respect and honour enjoyed by man and that it is a valid deduction".²

¹ Al-Bahr ul-Raeq 6:81.

² Hindiya 5:354.

As both the living and dead are identical in respect of dignity, therefore, neither the organs of a living person can be used for this purpose nor that of a dead person. In this connection the most explicit *Hadith* is the one, which says: "كسر عظم الميت ككس عظم الحي" (Breaking the bone of dead person is tantamount to breaking that of a living one).

4. In this connection two points are worth consideration:

Firstly, whether the transplantation of organs in the modern age would be taken as "the disgrace of man?" Secondly, whether the disgrace of an honoured being could be allowed to preserve a human life?

5. About the disgrace and dishonour of man through transplantation of organs, this is important to note that although the Prophet (peace be upon him) had declared that man is an honoured being and deserves an all out esteem and this testifies that he did not allow this disgrace. However, the Qur'an and Prophet's *Sunnah* have not set some uncompromisable limits and this aspect does not stand unraveled to the knowledgeable that those matters which the prime sources of Islam, i.e. the Qur'an and *Sunnah*, have left unclarified and without any obvious injunction can only be explicated by the customs, human behaviour and innate human nature. Wahebat al-Zuhaili has stated, while discussing various viewpoints of the Islamic Jurisprudence, that:

"قال الفقهاء أيضاً كل ما ورد به الشرع مطلقاً ولا ضابط له فيه ولا في اللغة يرجع فيه إلى العرف كالحرز في السرقة".

“Jurists have said that the matter which has been referred in the *Shariah*, and in totality neither there is a set rule in the *Shariah* nor in the lexicon for that

matter then the only recourse left would be on the prevalent human practice (*maruf*) as in case of preservation of vinegar.”¹

6. Moreover, there is no doubt that the prevalent human practices change with time and space and two different judgements could be reached upon as regards one matter. Some times, one judgement is taken as better than the other one or more reprehensive (*Makruh*) or the vice versa. Imam Ishaq Shatibi says:

"والمتبدلة منها ما يكون متبدلاً في العادة من حسن إلى قبح وبالعكس مثل كشف الرأس فإنه يختلف بحسب اليقاع في الواقع فهو الذي المروأت قبيح في البلاد المشرقية وغير قبيح في البلاد المغربية، فالحكم الشرعي يختلف باختلاف ذلك فيكون عند أهل المشرق قادحاً في العدالة وعند أهل المغرب غير قادح".

“Some things may transform from good to bad and others change in the reverse way, for instance, leaving the head uncovered is customarily unacceptable in the oriental countries whereas it is not unacceptable in the western countries. Only due to this difference, the injunctions of *Shariah* would differ. Hence, for the people of eastern countries, it would be harmful for the course of justice to allow unraveling of head whereas it would not be so in case of the people of western countries.”²

7. Hence, when the *Shariah* has not clearly mentioned any explicit principle as regards the disgrace or dignity of man, then it is essential to judge about any such thing in the light of normal

¹ Osool Al-Fiqh al-Islami 2: 831.

² Al-Muwafiqat 2: 209-210.

common human practices (*marufat*) in the respective ages whether the same is disgraceful or dignifying for human beings. And, it may be virtually possible that one thing which had been considered disgraceful to man in one particular age may not necessarily be taken so in the later time. It is true that the Jurists (*Fuqha*) had generally forbade mutilation of human organs, however, this denial was based on the contemporary assumption that it was a disgraceful thing for mankind, and by that time such methods could not be invented which might use human organs in a graceful manner. In our age, this act is not understood to be disgraceful or indignifying for man. If a person donates his organs to some one else then neither he considers this act as something untoward and disgraceful for him nor the society feels so. Rather, he may be honoured and respected for this generosity. For this reason, only a number of eminent dignitaries and personalities used to declare it on their will to donate certain organs of their body posthumously and these acts enjoy acclaims of one and all and are viewed as an act of high altruistic value.

Nowadays, it is a common practice that the blood of one person is transfused into the body of someone else. Now, there is almost unanimity in this regard. If the use of human organs is considered disgraceful for mankind then its removal from body should also be considered forbidden because the cases are akin to each other.

There is no doubt that some experts have differentiated between both the types of transplantation and conjectured the blood as comparable with the use of human milk, although this analogy does not hold good on logic, for milk is put in the human body for that very purpose and should be squeezed out from the body and be consumed. Its being left unused is harmful for health. On the other hand, the blood provides indispensable support to life processes and only its sustainability inside the body can assure constancy of life. Therefore, the blood cannot be an analogue of milk in that sense, rather that of other solid organs or body fluids inside human beings.

Mufti Kifaytullah although does not considers it proper but he does not as well declare transplantation of organs totally forbidden and concedes that there might be such a use of human organs which would not fall in the disallowed category of disgraceful things. The statement of the learned *mufti* is this, "This doubt that the use of human organs is forbidden should not arise, since only that use of human organs is forbidden which is being disgraceful and the form of use which is not disgraceful must not be essentially forbidden".¹ Since in the present time, such methods of using human organs have been invented which could not be alleged as disgraceful nor they may be taken so in the wake of prevalent customs (*marufat*). Hence, they should be considered as proper and permissible.

8. When other juristic instances are kept in view then it becomes evident that the safety and preservation of human life gets such a precedence that the things which are generally considered taboos would turn into permissible for a particular object. The sanctity of holy Qur'an is much more pronounced as compared to any human organ, according to the relevant *Hadith*, and to the extent that its recitation is not allowed without ablution or even to touch it in the state of impurity is taken as an untoward act. However, the Jurists (*Fuqha*) have permitted to write its holy verses in blood or urine for the purpose of treatment.

"والذي رعف فلا يرقاء دمه فأراد أن يكتب بدمه
على جبهته شيئاً من القرآن قال أبو بكر يجوز، وقيل
له: لو كتب له بالبول؟ قال: لو كان به شفاء لا بأس
به، قيل: لو، كتب على جلد ميتة، قال: إن كان منه
شفاء جاز."

"If a person is suffering from nose bleeding and that does not normally stop after some time and he wishes to write any part of the holy Qur'an on his forehead in blood, with the intension of treatment, it

is permitted as said by reverend Abu Bakr. He was asked whether it could be written in urine. He said that there was no harm provided it could ensure the treatment for certain. He was further asked whether the same could be written on the skin of something dead then he was affirmative again provided it could ensure wholesomeness of a patient.”¹

While discussing on a certain juristic problem, Allama Samarqandi based his derivation on this principle that for saving one persons life, the disgrace of another could be ignored. He writes:

"لو أن حاملاً ماتت في بطنها ولد يضطرب فإن
كان غالب الظن أنه ولد حي وهو في مدة يعيش
غالباً فإنه يشق بطنها، لأن فيه إحياء الأدمي فترك
تعظيم الأدمي أهون من مباشرة سبب الموت".
"If a pregnant woman dies and the baby inside her
womb shows some movement, in that case, if it is
felt that the child is still alive and is at the stage of
development in which a child can normally remain
alive, then her corpse would be cut open since it
would save a human life. And, it would be better to
allow some stain on human dignity then to become
instrumental in killing a living being.”²

That means, if a mother expires and her foetus shows some signs of life, then the Jurists have given permission for her postmortem to bring it out of her womb and their expressed logic is that the dignity of a dead person should be ignored to save a prospective life. This issue is also related with this principle of jurisprudence that whether a distressed person (*muztar*) is allowed to eat flesh of a dead person or not?

¹ Khulasat ul-Fatawa 4:361.

² Tohfah ul-Fuqaha 3:343.

Maliki and Hunbali schools of thought maintain that he cannot do so but the followers of Imam Shafai and a section of Hanafites considers it to be permissible since the dignity of a living one has a precedence over a dead one.

"وقال الشافعي وبعض الحنفية بباح"

“And, Shafaites and some of the Hanafites say it be permissible.”

Among Hanbali jurists, Abul Khattab has also adopted this opinion.

"واختار أبو الخطاب أن له أكله"

Imam Qurtabi writes:

"ثم إذا وجد المضطر ميتة وخنزيراً ولحم ابن آدم
أكل الميتة، لأنها حلال في حال والخنزير وابن آدم
لا يحل بحال ولا يأكل ابن آدم ولو مات، قاله
علماءنا، وبه قال أحمد وداؤد ... وقال الشافعي:
يأكل لحم ابن آدم".

“When a person’s life is at stack and he happens to find out some dead animal, pork and human flesh, then (out of them) he would be allowed to eat a dead animal since it becomes permissible in certain circumstances. Certainly pork and human flesh are not permissible in any situation, neither it is valid for a man to eat such a thing even though it may lead to one’s death. This is the statement of our *ulema* and this is the view of Imam Ahmad and

Daud. Imam Shafai considers eating of human flesh as permissible.”¹

The well-known Maliki jurist Ibn Arabi has also sided with the opinion of Shafai jurists that if one can save his life in this way he may eat it.¹ Similarly, if a distressed person happens to find such a person whose killing has become valid due to some offense, then preservation of his life by killing that person and eating his flesh would be permissible.² The narrator has even reported that Imam Shafai is gone to the extent that one can eat flesh of dead prophets to save one’s life.

The heavy criticism of learned people forced the latter Shafai scholars to consider corpses of prophets exceptional in this regard.

Ibn Nujaim writes:

"قالوا يخرج ما لو كان الميت نبياً فإنه لا يحل أكله للمضطر، لأنه حرمة أعظم في نظر الشرع من مهجة المضطر".

“They have said that the corpse of a prophet is exceptional from this. Its eating is not permissible for a distressed person. It is because in the opinion of the last Prophet the dignity of the prophet’s corpse is more than the life of a distressed person.”³

9. There is a doubt in the transfer of a human organ that the Jurists have not allowed a reprehensive (*Makruh*) thing which a person eats from the body of some one even with latter’s permission. Allama Kasani was of the view:

¹ Al-Jame li Ahkam il-Qur`an 2:299.

² See Al-Mughni 9:335, Qurtubi 2:229

³ Al-Ashbah wal-Nazaer P.84.

"أما الفرع الذي لا يباح ولا يرخص بالإكراه أصلاً فهو قتل المسلم لغير حق سواء كان الإكراه ناقصاً أو تاماً، وكذا قطع عضو من أعضائه ولو أذن له المكروه عليه، فقال للمكروه: افعل لا يباح له أن يفعل".

"After all that minor thing which is not approved nor there can be any relaxation in this regard due to its reprehensive status, then that minor thing will be the killing of a Muslim without any valid reason, whether the reprehensive is bearable or unbearable. And, similar is the case of human organs that even if the said reprehensive imperatives allow to mutilate human organs, still it would not be permissible."¹

Hence, even if transplantaion of organs of a dying person may be considered as permissible, it should not be considered as allowed to graft organs from one living person to the other one, even though the donor himself willingly offers for it. However, it is required to see this issue from the perspective of contemporary inventions and researches. There is no harm for a man in the transplantaion of organs whereas in chewing flesh of a living person there is an apprehension of great harm. For instance, mutilation of one's own organs is taken as correct, but the Jurists have denied permission for eating of the flesh of one's own body while bringing one's whole life at stake²:

"كما لا يسع للمضطر أن يقطع قطعة من نفسه
فيأكل"

Ibn Qadamah has thrown light on the justification for this viewpoint in these words:

¹ Badae ul-Sanae 7:177.

² Qazi Khan, Hidayah, p404.

"ولنا أن أكله من نفسه ربما قتله، فيكون قاتلاً نفسه
ولا يتيقن حصول البقاء بأكله".

“And our submission is that chewing of any part of one’s own body may sometime lead to one’s own death. In this way, one would become killer of one’s own self. Moreover, such an eating does not guarantee one’s own survival.”¹

Hence, it has become evident that transfer of human organs of a living person in the way that it would be proven fatal or injurious to one’s own self should not be considered as something proper and appropriate. However, if this transfer of organs is free from any fatality or injury to one’s own self and expected to be accomplished safely and also enjoys the donor’s consent then it would be considered as an appropriate act.

10. So long as some other injunctions of the *Shariah* are concerned, for example “Curse of Allah is upon the woman who beautifies herself by using hair of others” for this purpose, then, here, the use of only those body parts is forbidden which are indispensable for human life. Similarly, the statement “Breaking of bone of a non-living person is tantamount to breaking that of a living one” is assumed on normal situation; where there is no significant human need is associated with it.

That is why the Jurists have given permission for the postmortem of a dead mother to rescue the living baby inside her womb. Even in some specific circumstances the Jurists have permitted mutilation of corpse of a person who swallowed pearl of some one else and succumbed thereof so that the gem may be found out to preserve the right of the owner of the pearl.

¹ Al-Mughni 9:335.

According to some other experts this narration (of *Hadith*) is a deficient one (*Zaef*). In the chain of its narrators there is a person Saad Ibn Saeed about whom Ibn Hazm's opinion is that, "He is so undependable that his narration cannot be taken as a solid proof and there is no dispute in this regard".² Hence, indeed there is no solid evidence against the use of human organs which may be found in the basic sources (*Nusus*) of *Shariah* which may render the act of grafting the status of a forbidden thing.

11. In this regard, distinction between the organs of Muslims and non-Muslims is correct, that means it is better to transplant organs of another Muslim on the body of a Muslim; however, it would not be quite appropriate to make it a precondition. It is already explicated in the foregoing that the Jurists have allowed a person, whose life is at stake to eat out of such a person's body, which may be considered (*mubah al-dam*). Such jurists have clarified that eating the flesh of a warring enemy (*harbi*) is also classified under this category. There is a statement of Sarkhasi about a nursing woman that:

"ولا بأس بأن يستاجر المسلم الظئر الكافرة والتي
قد ولدت من الفجور لأن خبث الكفر في اعتقادها
دون لبنها، والأنبياء عليهم السلام والرسل صلوات
الله عليهم فيهم من أرضع بلبن الكوافر، وكذلك
فجورها لا يؤثر في لبنها".

"There is no harm that a Muslim hires a nursing non-Muslim woman for suckling his child or a woman whose character is not good, because the impurity of her faith is there in her thought and not in her milk. Several prophets were fed in their childhood on the milk of unbelieving women. In the

same way the behaviour of a bad character woman hardly affects her milk.”¹

Ibn Rushd Maliki is of the opinion that milk of a noble woman is better to rear a child, even though there is a permission to use the milk of a non-believing woman provided that there is no apprehension that she would give something non-permissible (*Haram*) to the child for eating and drinking:

"وتكره ظؤرة مثل اليهوديات والنصرانيات لما يخشى من أن تطعمهم الحرام وتسقيهم الخمر، وقال ابن حبيب عن مالك: فإذا أمن ذلك فلا بأس به".
“Keeping the Jewish and Christian women for suckling babies is considered odious (*Makruh*), for there is an apprehension that they would feed the child with a forbidden thing or give them wine to drink. Ibn Habib copies from Imam Malik that when such an apprehension is not felt then there is no harm to engage them.”²

So when this elaboration is admitted in case of suckling, then in those circumstances, which put a person’s life on jeopardy, it would be more appropriate to allow the use of organs of non-believers for transplantation.

12. So far as trade of human organs is concerned the *Shariah* has admitted that in certain situations human organs may become priceable and it is when a person is killed or his organs are mutilated, which is called in the terminology of *Shariah* as *diyyat* (compensation). There is also an agreement that it is not admissible to sale and purchase a person. Out of various human organs only hair and milk were two things, which were allowed as being

¹ Al-Mabsoot 15:127.

² Muqaddama`at Ibn Rushd with Mudawwanat ul-Kubra 2:71.

separated from the body. In ancient time, hair were used for cosmetic purposes. The Jurists disallowed its trade and said that its reason being the inflicted change in the human dignity and grace:

"وشعر الإنسان والانتفاع به أي لم يجز بيعه والانتفاع به، لأن الأدمي مكرم غير مبتذل، فلا يجوز أن يكون شئ من أجزاء مهانا مبتذلاً".
"That means, no benefit is permissible of selling human hair because man is an honoured creation and is not abominable. Hence, it is not permissible to deform or disgrace any human organ."¹

Allama Shami disapproved trading of human nails as well:

"وكذا بيع ما انفصل عن الأدمي كشعر وظفر، لأنه جزء الأدمي ولذا وجب دفته".
"Allama Shami has disallowed the trade of human nails in the same way as of human hair."²

However, there is a difference of opinion among the Jurists about the trading of human milk. The Hanafi scholars disallow it while giving importance to the aspect of human dignity:

"لم يجز بيع لبن المرأة، لأنه جزء الأدمي وهو بجميع أجزائه مكرم عن الابتذال بالبيع".
"It is not permissible to sell human milk, for, it is a part of human body and man 'along with all his body parts' has been honoured and dignified and he is not disgraceable."³

¹ Al-Bahr ul-Raeq 6:8, also note down: Hindiya 3:114.

² Radd ul-Muhtar 5:246.

³ Al-Barh ul Raeq 6:81, also Aalamghiri 3:114

Whereas Imam Shafai considers it unforbidden. Surkhi reports:

"ولا يجوز بيع لبن بني آدم على وجه من الوجوه
عندنا ولا يضمن متلفه أيضاً، وقال الشافعي رحمه
الله يجوز بيعه ويضمن متلفه، لأن هذا لبن طاهر أو
مشروب طاهر كلبن الأنعام ولأنه غذاء للعالم
فيجوز بيعه كسائر الأغذية، وبهذا تبين أنه مال
متقوم، فإن المالية والتقوم بكون العين منتفعاً به
شريعاً و عرفاً".

“For us, sales of woman’s milk is not permissible in any circumstance nor there would be any compensation due on the one who destroys it. And, Imam Shafai stated that its sale is permissible and the respective compensation would be essential on the persons who spoils it, since it is the pure milk or a drink like that of an animal and because it is a food of people, therefore, its sale would be permissible like other food items and it has become evident that it is a vendible commodity as its value and price exists according to the *Shariah* and customs, due to its quality of being useful.”¹

Although there is a difference of opinion among the scholars of Hanbali school of thought on this issue, however, according to a very eminent Hanbali dignitary, Ibn Qadamah, preference would be given to the position that human milk is saleable.²

Thus, in the view of experts, the trading of human organs would be permissible only due to some compulsions, as the Jurists have permitted bribing and giving of interest under certain necessities. But, according to the Shafai and Hanbali experts both the sale and

¹ Al-Mabsoot 15:125.

² Al-Mughni 4:177.

purchase of human organs are allowed. In this regard the following statement of Ibn Qudamah and its generality should be given a thought to:

"وسائر أجزاء الأدمي يجوز بيعها، فإنه يجوز بيع العبد والأمة".

“The sale and purchase of all the human organs is permissible because it is permissible to sell and purchase slaves of both the sexes.”¹

Later on, Ibn Qudamah declared that the sale and purchase of any severed organ would stand forbidden but it is not on the ground that the use of human organs is not considered permissible but due to the fact that by that time it was not possible at all to make use of such organs. As has been said:

"وحرّم بيع العضو المقطوع، لأنه لا نفع فيه"

And any mutilated organ's sale is not permissible because there is no profit in”.

Whereas it has become permissible now, according to the interpretation of Qudamah, it would be considered proper to sell or purchase such organs.

13. Nevertheless, this must be kept in view that some of the principles, found in the books of Hanafi school of thought as regards the permission or denial of sale or purchase of human organs, provide foundation of some of the juristic derivations, out of which there is one rule that such things, which are not categorised for sale or purchase due to their impurity or being forbidden due to some other reason, if becomes useable some how, then their sale or purchase would also become permissible. For instance:

¹ *Ibid.*

"لا يجوز بيع السرقيين أيضاً، لأنه نجس العين فتشابه العذرة وجلد الميتة قبل الدباغ ولنا أنه ينتفع به، لأنه يلقى في الأرض لاستكثار الريع، فكان مالاً والمال محل للبيع بخلاف العذرة، لأنه لا ينتفع بها إلا مخلوطاً ويجوز بيع المخلوط".

"Furthermore, the sale of manure is not permissible because it is an explicit impurity and stands identical with human stool and untreated skin of a dead animal. For us, the logic for this is that it can be utilised in the agriculture fields to enhance the fertility for good crops; therefore, it is a commodity and could be the case of a permitted item. Contrarily, human excreta becomes usable only when mixed with other things and in that condition it would also become a commodity which is permissible to sell."¹

On the basis of this derivation, Imam Mohammad declares that the trading of silk is permissible:

"أما الدودة فلا يجوز بيعه عند أبي حنيفة، لأنه من الهوام وعند أبي يوسف يجوز إذا ظهر فيه القز تبعاً، وعند محمد يجوز كيف ما كان لكونه منتفعاً به".

"After all the sale of silk worms is not allowed by Imam Abu Hanifa since it is one of the insects of earth. On the other side for Imam Abu Yusuf, their sale is permissible provided silk becomes obvious in them. And for Imam Mohammad it is permissible in

¹ Fath ul-Qadir 8:486.

all circumstances, because they have become a thing of utility.”¹

Another fact is that if the sale of any commodity is disallowed in reality and it is not against any clear evidence of the basic sources of Islamic *Shariah*, and the human need necessitates its permission, then in such cases the Jurists have permitted its sale and purchase. For instance Ibn Nujaim narrates:

"إذا اشترى العلق الذي يقال له بالفارسية مرعل
يجوز، وبه أخذ الصدر الشهيد لحاجة الناس إليه
لتمول الناس له".

“Whereas the purchase of which is termed in the Persian language as *jayaz* (allowed) and the chief of martyrs Imam Husain has adopted this opinion due to the need of people, because it provides opportunities for people to become wealthy.”²

Ibn Qudamah has also made use of this principle in deriving several injunctions and in the understanding of various issues.³

Now this is to be thought that the banking of human organs, which is medically required, and the supply of which is essential in huge quantities, for example at the time of war, earthquake, etc. and it is not possible to store the same in the contemporary time just on the basis of voluntary donation, then would it be appropriate to earn profit out of such a sale?

14. Now, the outcome of the foregoing discussion may be pinpointed as under:

¹ Al-Bahr ul-Raeq 6:78.

² Al-Bahr ul-Raeq 6:78.

³ Al-Mughni 4:174-176.

- i) The medical procedure invented and adopted for the transplantation of organs is obviously not disgraceful and undignifying for man.
- ii) Hence, it is permissible provided that there is an expressed objective in it to save human life or to regain the utility of human body parts, e.g. the eyesight.
- iii) And, an expert physician has confirmed that it would ensure recuperating impact on the body.
- iv) The organs of a non-Muslim could be grafted on the body of a Muslim.
- v) If the organ is being taken from a corpse then it would be essentially required that the person had given his permission in this regard when he was alive because he happened to possess it. Furthermore, his inheritor's permission would also be required.
- vi) If the organs of a living person is taken then the person should have given a verifiable permission for the same and that no fatal injury is inflicted on his own survival or health.
- vii) The banking of human organs are also valid; there is a provision for both the sale and purchase of human organs in the Shafai and Hanbli schools of thought, whereas according Hanafites it would be allowed only in some critical situations.

Transplantation of Organs In the Light of The Qur'an and Sunnah

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The world is progressing with a tremendous speed. New inventions have made man taken aback. However, it is obligatory upon the Muslims to see whether they conform to or are against the injunctions of the Islamic *Shariah*. It is possible to take advantage of new inventions and scientific discoveries in the framework laid down by the Qur'an and *Sunnah* and the teachings of *Sahaba* (the Companions of Prophet), then we should endeavour to do so without hesitation. For instance, television is presently used for a number of absurd things and we pass a decree against watching it, however, if it is used for some good purposes, for example relay of *Dars-e-Qur'an*, then we are compelled to give a favourable decree for its use. The same situation exists as regards transplantation of organs.

In case of transplantation, if an Islamically forbidden (*Haram*) thing is grafted then the *Shariah* would not allow it, but, if some permissible (*Halal*) things are transplanted then there would be no need to write and say something against it.

The nose of one of the Companions of the Messenger of Allah (peace be upon him) happened to be severed. He replaced it by using a nose made of silver, but it could not work properly. So after taking the permission of the Messenger of Allah (peace be upon him) he got it made of gold,¹ a commodity that is normally

¹ Mishk'at, Chapter Al-Khatam.

forbidden for males. We have been fixing artificial teeth prepared from pure materials and have been allowing other Muslims to do so. Now it is being realised that it is possible to produce almost all human organs artificially and their virtual use is already in vogue.

In a *Hadith* narrated in Tirmidhi there is a reference of binding of teeth by golden wire and it is reported:

"وقد روي عن غير واحد من أهل العلم أنهم شدّوا
أسنانهم بالذهب"

"It is narrated from many scholars (*ahl ul-ilm*) that they tied their teeth by golden wire."¹

In several books of Jurisprudence and edicts (*fatawa*) use of silver and gold is permitted for males on various occasions and disallowed in certain circumstances as well.

From this we come to know that most of such issues and problems have already emerged in the first century Hijrah itself and Imam Abu Hanifah and his disciples noted down their opinion on them after thorough and exhaustive discussions.

It is stated in the Fatawah Alamgiri:

"قال محمد ولا بأس بالتداوي بالعظم إذا كان عظم
شاة أو بقرة أو بعير أو فرس أو غيره من الدواب
إلا عظم الخنزير وال آدمي فإنه يكره التداوي بهما"

"Imam Muhammad says that there is no harm in curing through bones provided that the bone is that of goat, cow, camel, horse or other permissible animals and except the bone of pig and man.

¹ Tirmizi.

Treatment through the bones of latter ones is highly odious (*Makruh tahrimi*).¹
However, it has been made evident that the said animals should be permissible for slaughtering in Islam.

"إذا كان الحيوان ذكياً، لأنه عظم طاهر، رطباً كان أو يابساً يجوز الانتفاع به".
Whereas the animals should have been slaughtered Islamically such a bone would be pure, be it wet or dry, its use would be allowed.

It is permitted to make use of any dried bone of a dead animal but if it is wet it is not permitted.

"وأما إذا كان الحيوان ميتاً فإنما يجوز الانتفاع بعظمه إذا كان يابساً ولا يجوز إذا كان رطباً".
"And, however, if the animal is dead then it is permissible to use its dried bones and if the bones are wet then it is not permissible."²

Shami has noted down the statement of Imam Karkhi, as:

"قال الكرخي إذا سقطت ثنينة جل يأخذ من شاة زكية يشدد مكانها".
"Karkhi says that if fore-teeth of a person are broken then he can replace them by fixing teeth of a properly slaughtered goat."³

Obviously, Shariah allows technique of using artificial organs made up of pure and permissible materials. It is also endorsed to

¹ Alamgiri.

² Alamgiri.

³ Shami.

use an organ of a properly slaughtered animal. There is no reservation in it from the perspective of *Shariah*.

However, it is not permissible to use the organ of a living animal for transplantation after severing it from the animal since it would be taken as a dead thing which is impure from the Islamic point of view: It is said:

"المنفصل من الحي كميتة"

"Whatever is separated from a living being is a dead thing."¹

There is a *Hadith* of the Messenger of Allah (peace be upon him):

"ما يقطع من البهيمة وهي حيّة فهو ميتة"

"If some flesh is severed from a live body then it should be regarded as a dead thing."²

The only controversy that exists is concerning the transplantation of one man's organ on another man's body, i.e. homo-transplantation. So far as auto-transplantation is considered in which an organ of any human body is grafted on the same body, it is permissible. In Durri Mukhtar it is said:

"المنفصل من الحي كميتة إلا في حق صاحبه"

"Part of the body that is mutilated from it, is a dead thing but not for the body from which it virtually parted away."³

Therefore, it becomes obvious that there is no hindrance in using the technique of auto-transplantation because it would cure the

¹ Durri-Mukhtar.

² Tirmizi.

³ Durri-Mukhtar.

donor himself and no deformity would be possible in this way and no question of organ trade would arise therein.

Blood donation has been said to be permissible and a favourable *fatwah* has been issued in this connection. This judgement emanates from the rule:

"يجوز للعليل شرب الدم والبول إذا أخبر طبيب
مسلم أن شفاؤه فيه ولم يجد من المباح ما يقوم مقامه
وإن قال الطبيب يتعجل شفاؤك، فيه وجهان"
"For a patient, it is permitted to drink blood and
urine provided that a Muslim doctor specifically
states that his treatment is possible through doing
this only and that there is no alternative available to
this. And, if the doctor says that his recovery would
be faster then there are no further opinions in this
context."¹

Both the blood and urine are forbidden:

"حرمت عليكم الميتة والدم ولحم الخنزير"
"Forbidden to you (for food) are: Dead meat, blood,
the flesh of swine."²

The impurity of urine is evident as a forbidden thing, all the books of Jurisprudence are clear about this. However, if a Muslim physician feels that due to compulsion of saving a life it is necessary, then the *Shariah* would permit it.

Here, there is no clarity about using of blood and urine of the user himself or that of some one else. It may mean both, in the way the *Shariah* has allowed the use of human milk as a drug.

¹ Alamgiri.

² Surah Al-Maeda.

"ولا بأس بأن يسعط الرجل بلبن المرأة ويشربه
للدواء"

"There is no harm if a man drinks milk of a woman
as a drug."¹

It has already been stated that:

"الأعظم الخنزير والأدمي فإنه يكره التداوي بهما".
"The entire body of swine is impure and, hence,
forbidden, whereas the human parts are forbidden to
preserve and secure the dignity of man."²

In the books of Jurisprudence and religious edicts (*fatawa*), the
sale and purchase of human organs has been generally considered
forbidden in the wake of human dignity, may it be a part of living
person or a dead one.

"والأدمي محترم بعد موته على ما كان عليه في
حياته فكما لا يجوز التداوي بشئ من الأدمي إكراماً
له، فكذلك لا يجوز التداوي بعظم الميتة"؟

"Man enjoys respect even after death as he was
respectable when living. Hence, the way it is not
permissible to treat any one by using human organs
of a living person, similarly treatment through a
dead person's bone is also not allowed."³

About the person whose life is at stake (i.e.a *muztar*), and thus for
whom eating of dead meat is permitted, Jurists write:

¹ Alamgiri.

² Alamgiri.

³ Sharh ul-Kabir.

"مضطر لم يجد ميتة وخاف الهلاك، فقال له رجل:
اقطع يدي وكلها أو قال: مني قطعة وكلها لايسعه
أن يفعل ذلك، ولايصح الأمر به كما لايسع
للمضطر أن يقطع قطعة من نفسه فيأكل"

"If a *muztar* does not found any meat and apprehends the loss of his life, then, if he is permitted by some one to cut and eat the latter's hand or permitted to cut and eat part of his own body then it is not permissible for him to do so and neither it would be proper to ask for the same nor it would be permissible for the *muztar* to eat from his own body."¹

Jurists have also written that if a person is threatened that he should murder a person otherwise he himself would be killed then it would not be proper for the threatened person to do so in order to save his own life. Jurists write that it is not permissible.

In this connection the Jurists have in view several injunctions of the Qur'an and *Sunnah*, for instance:

"ولقد كرّمنا بني آدم"

"We have honoured the sons of Adam."²

"كسر عظم الميت ككسر عظم الحي"

"Breaking the bone of a dead person is tantamount to breaking the bone a living person."³

"أذى المؤمن في مماته كأذاه في حياته"

¹ Alamgiri, etc.

² Surah Bani Israel.

³ Mo`atta.

“To tease a dead believer is like teasing him as if he is living.”¹

One more reason in this regard is that if man is using human organs then he is daring against the injunctions of Allah because human organs are made a trust with him. Even more, any favourable decree in this matter would lead to total harm to the dignity of human beings and there would appear an unabated trade of human organs and there might be instances that man might feed himself and his family by just selling any of his vital organs or for meeting his expenses for drinking wine or buying drugs being addict and so on.

On the other side, those who do not believe in the hereafter or even if they believe then ignore their faith for the sake of earning money may be inclined to kidnap innocent people to steal their vital organs for the ugly trade of human organs. In such a situation, no contemporary law would be in a position to save people from victimisation; to whatever extent the law might be stern and rigorous. The life of poor and weaker sections of society would become even more vulnerable and precarious and the wealthy and powerful families would be in a position to suffocate the life of common and ordinary people. The ancient trade of slavery has been variously condemned and has become almost extinct but this would turn into an even worst situation and man would no more remain a human being in true sense.

Those people who accept transplantation of organs as permissible really blatantly oppose the *Shariah* and the judgements of the Jurists. The view that the injunctions should be based upon intention rather than on action is also not correct, from the author's point of view. The dictates of *Shariah* take into account only obvious things while considering such issues and they could not be based upon some invisible intention or wishes. How it can be

¹ Mosannaf Ibn Abi Shaiba, Kitab ul-Janaez.

wisdom to play with someone's health to remedy the problem of someone else and to make a man an easy prey to several health problems in the ensuing time? For the matters of hereafter an invisible aspect of human life might have credence but in case of worldly notions only cognisable things should have weightage.

Epochs have elapsed since the advent of prophet Adam (may he be in peace) and there has been fulfillment of dire human needs since then, but such a heinous behaviour, oppression and transgression could yet hardly be imagined like this cruelty, may be upon one's own self or may be on that of others. Already there is someone under pain and problem but this is an attempt to bother and involve someone else into the sufferings.

It is said that the Jurists have allowed the operation of pregnant women in case of emergencies, for example, to remove a foetus from womb to save their life but in such a situation the foetus should be considered as the part of mother herself whether it is live or dead and should not be judged as a separate entity. Therefore, both are considered as one unit so far as the Islamic Jurisprudence is concerned. Hence, to compare this special case with that of transplantation of organs is not at all correct.

Postmortem is not an issue from the *Shariah* point of view so it should not be confused with the issue under discussion. It is a selfish attitude to call this action as altruism and an act of benevolence to fellow beings. It has been pondered that it is a matter of great sacrifice to provide organs of a live or dead person to a relief seeking person but should it not be an acclaimed sacrifice of an ailing person in favour of a living person by refusing to use one's organs? Should any one not sacrifice on his part to uphold the honour and dignity of mankind? This one-sided appreciation of sacrifice is really astonishing one!

This permission given by some lenient jurists, to a person whose life is at stake (a *muztar*), to eat flesh of a living or a dead person

to save his life need not be referred to very considerably in such cases. Their sympathy is only unidirectional. The dignity of mankind necessitates keeping eyes on both the aspects. To make a living and healthy person an easy prey of an ailing person or to stain the human dignity in some way would hardly be approved of.

A government, which fails to curb on blood shed, plunder, etc. could hardly be expected wisely to use the permission accorded for transplantation of organs in a judicious manner. What a frightening scene it would be to watch that as soon as a person breaths his last, a team of doctors would engage itself to chop away his eyes, kidneys and other vital organs from the corpse. And, dead bodies of a lot of poor and helpless people would be conspicuously mutilated into pieces even before such bodies get cold.

One can only wonder on the wisdom and understanding of those who equalise donation of human organs with that of hair cutting, circumcision and operation of human bodies in certain emergencies.

In this regard, the learned scholars of the Hanafi school of thought may be acclaimed for being strictly abiding by the basic sources of Islam, i.e. the Qur'an and *Sunnah* and for keeping dear the honour and dignity of human beings.

Grafting of Human Organs

Maulana Shams Peerzadah
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Two questions are very basic pertaining to the issue of transplantation of organs. Firstly, to what extent man has a right to harness the processes and structure of his own body? And secondly, whether it is permissible to make use of human corpses for this purpose? We should try to search the answer of these two questions from the Holy Qur'an and the Tradition (*Sunnah*) of the Prophet (peace be upon him).

The answer of the first question is that the whole existence of man including his own body is a trust and he is answerable to Allah while exploiting it:

"إن السمع والبصر والفؤاد كل أولئك كان عنه مسئولاً".
"Surely the hearing, the sight, the heart, all of those shall be questioned of."¹

Therefore, man can harness and exploit human body only to the extent permitted by the *Shariah*. He has no right to exploit it while transgressing the given bounds. For example, Allah has given man two eyes:

"ألم نجعل له عينين ولساناً وشفقتين".
"Have we not made for him a pair of eyes? And a tongue, and a pair of lips?"²

¹ Surah Bani Israel: 36.

² Surah Balad: 98.

So, now, if a man is inclined to donate one of his eyes to a blind person, his this act would be condemnable in spite of the great sacrifice and altruism exhibited therein, since the *Shariah* has not at all allowed him to do so, nor the other eye exists as a vestigial organ, because Allah has not created any organ purposeless for man, rather, there is a great wisdom underlying in the creation of each of the organs, as illustrated in the verses:

"الذي خلقك فسواك فعدلك في أي صورة ما شاء
ركبك"

"He who created thee fashioned thee in due proportion, and gave thee a just bias. In whatever form He wills, does He put thee together."¹

And,

"لقد خلقنا الإنسان في أحسن تقويم"
"We have indeed created man in best of moulds."²

So, if a man possesses two kidneys it is not without wisdom and purpose. If one kidney is not functioning properly or totally damaged then the second one can still continue to work the way man can see from the functioning of one eye, i.e. if one eye is somehow out of order then man is not totally devoid of sight. Hence, this viewpoint is out rightly incorrect that any human organ is a spare part in the body and could be parted away to someone else. Moreover, our right to manipulate any human body is limited to the extent that one has right to correct, his own body or when it is necessary for *qasas*, i.e. "العين بالعين" "eye for the eye".³

¹ Surah Infetar.

² Surah Teen: 4.

³ Surah Maedah.

However, this is not valid to chop off any one's internal or external organs so as to donate them to others in spite of the respective donor's permission thereof. It shall be considered as the change in the basic nature bestowed to the creation of Allah, i. e. *tagayyur fi khalqi Allah*:

"فبعث الله غراباً يبحث في الأرض ليريه كيف
يواري سوءة أخيه، قال يويلتى اعجزت أن اكون
مثل هذا الغراب فأواري سوءة أخي فأصبح من
النادمين".

"Then Allah sent a raven, who scratched the ground, to show him (Qabil) how to hide the naked body of his brother. "Woe is me! "Said he; "Was I not even able to be as this raven, and to hide the naked body of my brother?" Then he became full of regrets."¹

And so far as the removal of vital organs from a corpse is considered, for immediate or prospective grafting in a stranger's body, the author understands that there is no proof of its permission in the *Shariah*. In the story of Habil and Qabil (in the Bible Abel and Cain) it has been explicitly shown in the Qur'an from the very advent of mankind. After killing his brother Habil, Kabil was anxious what to do with the dead body? Then God sent a raven to show him the method of burial as has been mentioned to by Allah:

"ثم أماته فأقبره"

"Then he causeth him to die and putteth him in his grave."²

¹ Surah Maedah: 31.

² Surah Abasa: 21

It should be noted that the divine guidance is this that the dead bodies should be properly placed in their respective graves. And, an elaborate way has been shown in this regard in the tradition of the Prophet (peace be upon him).

In one *Hadith* the dignity of corpse has been mentioned thus:

"كسر عظم الميت ككسره حياً"

“The breaking of a dead person’s bone is tantamount to breaking the one that belongs to a living one.”¹

Hence, it is apparent that the real stricture is related to the corpse, therefore, neither it is permissible to mutilate any organ from it nor its use by man in any form. Furthermore, its non-permissibility involves the principle of trust, human dignity and other moral aspects. So, hardly there is any chance to deduct any favourable sanction in this regard in the absence of any explicit and irrefutable proof. The permission of using flesh of a dead body, blood, etc. so as to save one’s life could hardly be conjectured as in the context of a corpse, for the dignity of man and his corpse renders the issue quite a different one.

It could be said in plain words that the *Shariah* has not empowered us to mutilate a dead body into pieces in order to benefit a living person and to make use of these pieces for grafting. Indeed, morally and Islamically it is a beastly act and there is every apprehension that even with very strict regulations, its permission would lead to unrestricted use of human corpses, may they be that of a Muslim or a non-Muslim, man or woman and no distinction would be made as regards them in the process of transplantation. The absurdity of contemporary society has reached to such an extent that human organs and corpses are now being shamelessly

¹ Mishka`t, Kitab ul-Janaer with reference Mo`atta, Abu Dawood, Ibn Maja.

sold and purchased as if a human being is something like a vendible commodity.

If there is any apparent advantage of transplantation of human organs, still, the dimension of moral degradation and glaring rapacity is greater than this. Therefore, it cannot be declared as valid. Allowing the transfer of human organs from one body to another and mutilation of a corpse would have deep impact on the psychology, emotions and morality of human beings. The present day mental vulgarity, moral irresponsiveness and violent behaviour are indeed a product of such beastly acts. Therefore, while understanding the juristic issues, our approach should not be simply that of a professional discussion rather our eyes should focus on the impact and repercussions of such things.

If human organs are being used today for transplantation then there is a strong possibility that in future human flesh would also be used say for medicine in consequence of medical researches and may be that the powder of human bones may be found panacea in several diseases through its bio-medical application, whereas it is said in a *Hadith*:

"نهى رسول الله صلى الله عليه وسلم عن الدواء
الخبيث"

"The Prophet of Allah (peace be upon him) has forbidden using an impure medicine."¹

Zohari said that in spite of unbearable pain do not use human urine as medicine since Allah has declared only pure things as permissible for mankind. And Ibn Masood says about intoxicants that Allah has not given wholesomeness in the forbidden things.

¹ Mishk`at, Kitab ul-Tib with reference Ahmad, Abu Dawood, Tirmizi, Ibn Maja.

"قال الزهري لا يحل شرب بول الناس لشدة تنزل،
لأنه رجس- قال الله تعالى أحل لكم الطيبات - وقال
إبن مسعود في السكر أن الله لم يجعل شفاءكم فيما
حرم عليكم"

"The Messenger of Allah has forbade use of a drug
made up of some thing impure."¹

The medical science should better attempt to do the miracle of transforming the soul of an ill person into the body of a healthy one, instead of raising a man on the side of a corpse, so that the very need of transplantation of organs and mutilation of a dead body would not come across and an entirely intact corpse may remain available for burial. And, this controversy may be resolved in this way that its very basis would no more exist. However, it seems that one should wait until the advent of Dajjal to perform such miracles.

Conclusively,

- i) The method of grafting human organs from one living person to another cannot be said permissible from the Islamic point of view.
- ii) It is also not valid to use human corpses or any part thereof for transplantation in any form.
- iii) Blood donation cannot be considered permissible but only when it is necessary and compelling to save a human life, for it is not an organ and the process of haemopoiesis would always replace it by generating new blood cells in the human body. Whereas any organ, for example, an eye or a kidney when severed from a body do not regenerate. Moreover, the removal

¹ Bukhari, Kitab ul-Ashribah.

of bad blood from human body has already been permitted in the Islamic *Shariah*.

Transplantation of Organs: the Issue of Human Dignity

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An elaborate article of the author has been brought out on the issue of transplantation of human organs in Urdu and Arabic languages and the same was reproduced in a book, i.e. on pages 37 to 59 in *Jadid Medical Masail*, and on 61 to 68 in *Qadhaya Fiqhi Ma'asrah* and the theme under discussion and the present theme has been logically and systematically dealt with in that elaborate note.

Explaining the Issue

In the view of the author and several others, rather almost all eminent *ulema* in India, it is not valid and, juridically forbidden, to use any human organ, may be from a living or a dead person, for grafting it on the body of another person, the reason and logic of this standpoint may be briefly found here.

1. The separation of organ from a human body, in which there is no benefit for the body itself, is termed as *mathalah* (mutilation) and about which the *ulema* of entire *Ummah* almost have a consensus that this is *Makruh* (odious) or for that matter even *Haram* (forbidden).¹

2. Anyway, it is unanimously forbidden to use human organs for someone else, i.e. for homo-transplantation, therefore, the majority of Jurists (*fuqha*) do not consider it valid even for a

¹ Majmooaa Fatawa Ibn Taimia 28:314, Sharh Muslim lil-Nowwi 2:28, Al-Mughni lil-Ibn Qudama 10:565, Umdat ul-Qari Sharh Bukhari lil-Aini 8:296.

muztar (a person whose life is at stake) or consider it something *Makruh* because the organs severed from a body for transplantation on other's body, even with the permission of the donor (*mu'atti*), cannot be used in the light of the *Hadith*:

"لعن الله الوصلة والمستوصلة"

May Allah's curse be upon the woman who longs for immortality and the one who uses hair of other's (in the hairlock).¹

The authenticity of similar injunctions for both the living or dead persons could be seen in the following *Hadith*.

"كسر عظم الميت ككسره حيا"

Breaking of dead person's bone is tantamount to breaking the bone of a living one.²

And in this *Hadith* as well:

"أذى المومن في موته كأذاه في حياته"

Injuring a dead believer is equal to injuring a living one.³

3. Any organ mutilated from a living animal (including a human being as well) falls in the injunctions of a dead thing, thus being considered impure and accordingly the injunctions thereof, barring the one which is grafted again on the donor's own body (i.e. auto-transplantation). For this, refer to the *Hadith*:

¹ Bukhari, Muslim, also Sharh Muslim lil- Nowwi 2:204, Badae ul-Sanae 7:177, Al-Mughni 9:231 and 11:79, Al-Ashbah lil-Ibn Nojaim P. 124, Radd ul-Muhtar lil-Ibn Aabidin 5:215, Mojam -e- Fiqh -e- Ibn Hazm 2:517.

² Rawayat Sonan -e- Abi Dawood 2:102, Mo'atta Imam Malik P. 60, Mishka`at ul-Masabih P. 29 with reference Munad Ahmad and Ibn Maja.

³ Rawayat Mosannaf Ibn Shaiba with reference Aujaz ul-Masalik 2:8-507.

"ما قطع من البهيمة وهي ميت فهي ميتة"
Any flesh severed from a living animal turns to be a
dead thing.¹

Please also refer to the statements explaining this *Hadith*.²

4. There is a great apprehension that by permitting the use of one or some organs would gradually open the door for all the organs and, thus, for their disgrace, which may lead to very severe and dangerous consequences. For this see the comment of Maulana Abul Aala Maududi.³

5. It is a universally accepted principle of *Shariah* that if both the permission and prohibition are involved in one thing then in that case prohibition would have precedence and there are several proofs and references in its validity, for, in an authentic *Hadith* of Muslim, it has been mentioned that:

"عن عدى بن حاتم رضي الله عنه قال سألت
رسول الله صلى الله عليه وسلم عن الصيد، قال إذا
رمىك بسهمك فاذكر اسم الله، فان وجدته، قد قتل
فكل إلا أن تجده قد وقع في ماء فإنك لا تدري الماء
قتله أو سهمك، وفي رواية فلا تأكل".

“Reverend Adi bin Hatim narrates that when he asked the Messenger of Allah (peace be upon him) regarding hunting he told: when you strike your target then pronounce Allah’s name before shooting your arrow and if you find it dead even then you eat it. However, if you find it drowned in water then do

¹ Rawayat Abu Dawood, Tirmizi, Konooz ul-Haqaeq and Ahmad.

² Bazl ul-Majhood lil-Sheikh Khalil Ahmad 13:109, Tohfah ul-Ahwazi lil-Sheikh Abdul Rahman Al-Mubarakpuri.

³ An answer of Maulana Abu Aala Maudoodi. qouted from Rah-e-Sa`adat P. 77-78.

not eat because you cannot be sure whether it succumbed being drowned or due to your arrow”¹.

The principle is further explained in the following statement of Shah Waliullah:

"قد يتعارض في المسألة وجهان وجه إباحة ووجه
تحريم... فلا يصفوا ما بين العبد وما بين الله إلا
بتركه".

“In this problem both the situations are contradictory, one that of permission and another that of prohibition. If any thing occurs between Allah and His servants then the instruction commands to abandon it”².

As a consequence of homo or hetero-transplantation, the respective human body would remain attached with an impure thing for the rest of life involving a number of Islamic injunctions regarding cleanliness and impurities. And, according to Imam Shafai it would be necessary to remove it by force. Otherwise, it would be difficult to draw any conclusion from the statement of Imam Shafai (as regards validity of eating of human flesh for saving one’s life) due to the problem of *talfeeq*.

There is difference of opinion on this issue. One opinion is in its favour whereas another is diametrically opposed to it. Hence, the matter is not distinguishably clear between man, the Slave of Allah, and His Lord, so it is better to be avoided.

For a better and detailed understanding of the issue under discussion, the precious book of Maulvi Ali Ahmed Nadvi titled *Al-Qawaid al-Faqiha* may be consulted.

¹ Sahih Muslim 2:146.

² Hujjat ul-Islam 1:101.

Other Opinions

1. Maulana Mufti Nizamuddin Darul uloom Deoband, U. P.

- A- In this regard the first thing is related to transplantation of organs on the same body (i.e. auto-transplantation). It should be appreciated.
- B- However, transplantation of organs of one person to another, i.e. homo-transplantation is not appropriate at all.
- C- Hetero-transplantation, i.e. of non-human organs on a human body, would be all right only if the animal belongs to the category of slaughterable ones (*mazbuh*) for it would not raise the problem of impurity as regards the human body.
- D- The transplantation of such non-human organs that belongs to the non-permitted category of animals would not be allowable.
- E- The transplantation of artificial organs on human body obtained from sources other than human beings and animals and that qualify as 'pure things' (*tayyabat*) such as rubber, plastic, etc. would be permissible.

2. Maulana Jamil Ahmed Naziri

It is humbly submitted that if the case of transplantation qualifies for the juristic terms i.e. Necessity, *Zarurat*, and Exigency (*Iztirar*), whereof there is a strong feeling that human life is at stake, then, there is a chance of permissibility of transplantation of organs obtained from both the living and dead persons. And, in Al-Mughani Vol. 8 pp 601-602 and Sharah al-Mahzob, in Vol. 9 pp 44,45 & 49, wherein it is permitted to save one's life by eating flesh of a warring enemy (*harbi*) or that of an apostate (*murtad*)

after killing them or for that purpose that of a dead person's corpse.

However, the condition of exigency should be binding, otherwise, it would be impossible even through stern public measures to prevent people from treating human beings as commodities (*maal mubtAzl*). And, consequently the possible danger of transgression of human values would become a reality. Rather, the trading of human organs has already become a lucrative business and this process is taking place without any restriction. In such a circumstance, the concept of human dignity is gradually sloughing away and human organs have become consumer items similar to that of animals. For instance, Maulana Mufti Mohammad Shafi has quoted a long passage from an article published in some newspaper in *Jawahrul Fuqha* vol. 2 p 44.

If it is permitted to transplant such organs on human body which are essential to save a human life, then it would also be permitted to operate organ banks to make such organs available on demand or at the time of emergency. If it is not available otherwise, it would be permissible for a person to purchase the desired human organ. However, it would not be permissible for an organ donor to take money in exchange.

This is based on the following principles:

A.

الف - "لا يجوز بيع شعر الخنزير بأنه نجس العين، فلا يجوز بيعه إهانة له ويجوز الإنتفاع للخرز".

“It is not permissible to sell hair of swine because it is impure beyond doubt and due to this inferiority

its sell is not permissible. However, it is permissible to make use of its skin”.¹

B.

ب - " عن الإمام أن الإنتفاع بالعدرة الخالصة جائز
..... مع أنه لايجوز بيعها"

“It is reported from the reverend Imam that it is permissible to make use of treated skin although its sell is not permissible”.²

C.

ج - "فلو لم يوجد إلا بشراء جاز شراء"

“If it is not available free of cost then it is also permissible to purchase this organ”.³

But, the permissibility of this endowment that after one’s death his one or the other organ should be used for transplantation is beyond consideration because when a person is living it would be proper for him to judge the respective case and donate his organs but after his death there is no definite “needy person” as required by the *Shariah* for the willed organ and, therefore, it could not be regarded as a fit case for the permissibility of donation of an organ posthumously through a respective will, although there is a possibility that there might be some one really needy of that organ. That means, if a needy person is present then there is an excuse due to the Necessity of both the giving and receiving whereas in the case of will a needy person may not be readily present to use it and, therefore, there is no excuse for donation of a human organ in the absence of Necessity. Hence, neither there is “an exigency” nor there is permission for the respective will.

¹ Hidayah 3:55.

² Rad ul Mukhtar 4:113.

³ Fath ul Qadir 5:202.

Hence, organs of both the Muslims and non-Muslims may be accepted while they are living (provided that the same has been received without coercion or compulsion and with the expressed consent of the donor) and, in case of dead persons, organs of only non-Muslims should be accepted (provided that he does not have any inheritor or all the interiors have given written permission for the same, again without any coercion or compulsion). And, the organ banking should be run only on the basis of organs of non-Muslims. This distinction between the organs of Muslims and non-Muslims is on the basis of separate regulations regarding various matters pertaining to them.

Sharh Al-Mohazzab lil-Nauvi vol. 9 page 44 records:

"هذا ما عندي من الشرع الشريف فإن كان خطأ
فمن نفسي وإن كان حقاً وصواباً فمن الله تبارك
وتعالى وعليه التكلان وهو الموفق للسداد
والصواب".

"That is from my perspective. If there is any mistake it is absolutely mine and if there is any truth in it, it is from Allah the Elevated Almighty. And, there is dependence on only Allah and it is He only Who guides on the right path".

3. *Maulana Mufti Shakil Ahmad Sitapuri*

Hazrat Aysha narrated from the Prophet of Allah (peace be upon him):

"عن عائشة أن رسول الله صلى الله عليه وسلم قال:
إن كسر عظم الميت مثل كسر عظمه حياً".

"It is narrated from reverend Aysha that the Messenger of Allah (peace be upon him) has said:

The breaking of bone of a dead is tantamount to breaking of a living one”¹.

Allama Shaukani writes in its commentary that:

"فيه دليل على وجوب الرفق بالميت في غسله
وتكفينه وعمله وغير ذلك، ولأن تشبيهه كسر عظمه
بكسر عظم الحي ان كان في اللآثم فلا شك في
التحريم، وان كان في التألم فكما يحرم تأليم الحي
يحرم تأليم الميت وقد زاد ابن ماجه من حيث أم
مسلمة لفظ في الاثم فيتعين الإحتمال الأول"

“In this *Hadith*, there is proof of essentiality of taking due care in the rituals of burial of a corpse, it is because the breaking of bone of a dead person is compared with that of a living one. If this denotes a sin then there is doubt about its prohibition and if it shows just an injury then it should be taken unlawful since it is not permitted to cause an injury to a living person and he deserves the same treatment after death. Ibn Maljah has added the word: *Al Ithm* (sin) in the narration. Hence, the first possibility has been established”².

A comprehensive perusal of the entire section on funerals (*Kitab - ul- Janaiz*) gives the impression that the corpses are as such non-harmable whether they belong to a Muslim or a non-Muslim. So there is no scope for mutilation of a human organ from a dead body for grafting of the same on the body of another living person. And, for transplantation of organs, the ongoing killing of living persons, the trading of children’s heads and the exploitation of poor people by the aristocrats and rich ones is a glaring demonstration that the

¹ Nail ul Autar Volume 4.

² *Ibid.*,P.26.

“injuries of this process are more than its benefits”, (*itham akbaru min naf'ahuma*). Hence, other means for achieving the same goals should be considered.

4. Maulana Tajuddin

Darul Uloom Siddiquia, Mysore

The issue of transplantation has three dimensions, namely:

- a) The organs of animal origin may be used under compelling circumstances if both the (*ma kul-al-lahim*) and (*ghir makul-al-lahim*) are from a non-slaughterable source and the person, whose life is at stake, has no alternative thing available for the purpose of transplantation then there is no harm in using such an organ.
- b) There is no hindrance from the *Shariah* in using any part or organ of one's own body somewhere else on the same body.

"المنفصل من الحي كمية إلا في حق صاحبه"

“Part of the body that is mutilated from it, is a dead thing, but, not for the body from which it actually parted away.”¹

- c) The third dimension of the issue, which has rather become controversial, is whether one person's organ could be used for the treatment of another person or not. For resolving this issue, it is necessary to keep eyes on the various justifications of Jurists regarding human organs. Some of them have opinion as regards human dignity that this emanates from the common practice, customs and human attitudes. In my opinion it is not correct. Rather, the Muslim jurists have mentioned human dignity as a justification while forbidding trading of human organs. It is recorded in the *Durri Mukhtar*.

¹ Tirmizi

In the same way, while arguing in affirmation on the issue of tanning of raw leather from both the eatable or non-eatable animals, the Jurists have made human skin and pork skin exceptions to this affirmative judgement and pointed out that the pig-skin cannot become pure even after its due tanning because it itself is impure and tabooed and considered that human skin would not be usable even after treatment because of inviolability of human dignity. Therefore, the justification for non-usability of human organs has been due to human dignity and specialty.

Since, no explicit reference pertaining to transplantation of organs may be found in the twine-sources of Islam (*Nusus*), and the Qur'anic verse (*We have made human beings dignified and respectable*) does not explicitly deny transplantation of organs, rather, this verse makes a general statement. However, this verse may be considered while passing any judgement on the issue of transplantation. Since, there is no substantial proof against transplantation of organs in the basic sources of the *Shariah*, the contemporary jurists have cautiously dealt on the issue and gave juridical decrees against it although some of them are also having favourable opinion in this regard.

It is humbly submitted that if we make a judgement favouring transplantation of organs, then in this era of chaotic situation people may use this positive decision for the sale and purchase of human organs. Consequently, the human race would become just a saleable commodity and it would become tremendously difficult to preserve the divinely ordained human dignity. People would not stop due to envy and greed making it a challenge for law and order in society. In spite of possibility of stern regulations against trading of human organs there is an apprehension that it would be almost impossible to check the evils brought out by such a practice. Hence, it should be declared that trading of human organs is a forbidden practice. However, there may be some scope for allowing a living person to donate some of his organs to someone

else with the motive to save the latter's life and under no pressure or duress. However, the use of dead person's organ is not permissible as has been mentioned in various narrations from the Prophet (peace be upon him). For instance; "The breaking of bone of a dead person is tantamount to that of a living one" and "Injuring a dead believer is equal to injuring him when alive". Or, "Treat your dead the way you treat your newly wedded bride".

In the light of these *Ahadith* the use of any part of a dead human body is not permitted for any use and if a person has passed away after making some will in this regard then such a will would be declared unacceptable and void.

5. Maulana Mufti Abdul Wahab Patel
Baqeyatus Salihat, Vellor

One *Hadith* from Abdur Rahman bin Tarfa has been narrated in Mishkat-ul-Masabih page No. 379 that the nose of his grandfather Arfajah bin Asad happened to be severed on Yaumi Kalab. So he planted a silver nose on the nasal spot. While sensing bad odour coming out of it, the Prophet (peace be upon him) advised him to replace it by a nose made of gold. (Tirmizi, Abu Daud, Nasai). Apparently, the Prophet (peace be upon him) would have asked him to replace his mutilated nose by a nose of a corpse had it been permissible. Hence, he did not prescribe that because mankind is a divinely honoured creation and the respect of human dignity is an accepted thing. People are forbidden to damage or mutilate any human organ, for example the *Hadith* narrated in Bukhari or Mishkat al-Masabih, records: "نهى رسول الله صلى الله عليه وسلم" "عن المتلة" "The Messenger of Allah (peace be upon him) forbade damaging an organ."

It has been mentioned in Durri Mukhtar that a man can eat a forbidden thing to save his life being hungry, by eating only that much quantity of the forbidden thing which could save his life and give strength enough to offer prayers in a standing position. But,

even in such a circumstance, eating of human flesh was disallowed. Furthermore, it has been evident (in Durri Mukhtar page 215) that if a person is dying of hunger and some one offers that he could eat the flesh of latter's hand after cutting it so that his life could be saved, then it is not permissible for the hungry and critically suffering person to do so. It is said:

"الأكل للغذاء والشرب للعطش ولو من حرام أو ميتة أو مال مقدار ما يدفع الإنسان الهلاك عن نفسه وهو مقدار ما يتمكن به من الصلاة قائماً. وفي رد المختار: وإن قال اقطع وكلها لا يحل، لأن لحم الإنسان لا يباح في الاضطرار لكرامته".

"Food is for nutrition, drink for the trust, whether the same has been obtained from prohibited thing, dead body or from other's money, to such an extent that a person may be able to save his life and in a quantity which may render him capable enough to perform obligatory prayers. And in Durri Mukhtar it is further stated that if someone suggests to cut off flesh from a dead human body and to eat from it, then it will not be permissible to do so, even in a situation of emergency or exigency because of human dignity."¹

Moreover, it is forbidden to use hair of another woman in the hairlock by any woman for cosmetic purpose. This practice was prevalent in the Arab society before the advent of Islam and the Prophet (peace be upon him) has forbidden its use by the Muslim women. He even called curse on the women who do so: *l'anatallahu wathila*, i.e. "May Allah's wrath be upon the woman who combines another women's hair in her hairlock."² It should be noted that:

¹ Hidayah, Kitab ul-Baylia P. 31.

² Durri-Mukhtar P. 239.

"وإذا وصلت المرأة شعر غيرها بشعرها فهو
مكروه وإنما الرخصة في غير شعر بني آدم تتخذه
المرأة لتزين قرونها"

"When a woman interlock her hair with other woman's hair, then it is odious (*Makruh*) and there is a permission for non-human hair only, which a woman uses to beautify her hair."¹

However, the use of non-human hair has been found permissible. Furthermore, it is not permissible to sell human organs or use them for any human benefit.

"لا يجوز بيع شعور الإنسان ولا الانتفاع، به لأن
الآدمي مكرم لا متبذل فلا يجوز أن يكون شئ من
أجزائه مهاناً متبذلاً وقد قال عليه السلام: لعن الله
الواصلة والمستوصلة (الحديث) إنما يرخص فيما
يتخذ من الوبر فيزين في قرون النساء وذوائبهن".

"It is not permissible to sell human hair nor to make use of them, because man is an hounoured being and not a disgraced one. Therefore, it is not appropriate to consider any human part as disgraced. The Prophet (peace be upon him) said: Allah's curse be upon the woman who combines her hair with someone else's hair or the one who is willing to do so. The permission is only for hair of animals, which a woman may use to beautify her feminine hair."

In the light of above arguments and proofs it becomes evident that transplanted organs are not permissible.

Section B

The Issue of Birth Control And the Islamic Law

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The issues, which came into being as a consequence of modern civilisation and the Western approach of life, include the one pertaining to birth control and family planning. Malthus postulated that the fast increase of human population in the world might turn into an explosive situation. And, a time may thus befall, when man would be forced to become a cannibal. By applying mathematics and the knowledge of computation, he highlighted this issue to such an extent that Europe was completely frightened. Whether it is Malthusian theory or the new Malthusian theory, the experiences of the last one and half centuries have belied this frightening analysis. The imbalance between the ratio of mortality and fertility and the increase in food production was accepted as the basis of control of human population. And, then various methods and techniques were invented and applied to reduce human population in the world and with the progress of science and technology there had been a trend of constantly developing new measures for this purpose. This European fallacy also gradually spread into other developing countries and the Western countries not only gave huge grants to these nations but also imposed upon them the condition to adopt this policy for any development loans or grants so that these countries may succeed in reducing their population to a certain level. Consequently, the developing countries have also become participants in the rush for controlling human population. For this purpose, every strategy of reward and punishment was applied by the developed nations; even the technique of pressure and coercion was not spared in this regard. The moral values and cultural

imperatives were totally ignored which are ingredients of even the Western society.

The advocates of “planned family” and “birth control” plead their case mainly on the logic of dangers involved in the imbalance between population and production. This point of view is not directly the theme of the present discussion. A number of stalwarts and religious doyens have already written a lot of on the subject. The theme of the present discussion is to ascertain the juridical position on permanent methods of birth control and abortion. And, whether the Islamic Jurisprudence prohibits birth control as such or in some isolated and personal difficulty and in special circumstances is this permitted? And, whether all the techniques are sanctioned in the permitted situations or only some selected techniques are permitted? In this regard, a number of Islamic scholars and *ulema* were approached and their responses have also been received. Due to the importance of this issue, the responses of these *ulema* will be presented here in detail. However, before that, it would be proper to discuss annotation on various questions posed to draw the problem comprehensively. On this occasion, it may also be noted that a team of expert doctors have developed this well designed questionnaire while covering on various aspects of the problem, which may be found in the following.

Questionnaire regarding Family Planning & Abortion

I. Introduction

Presently two types of methods are in vogue for birth control.

1. Temporary: There are three categories under this head:
 - a) Chemicals: Internal use of drugs in which certain pills are given or the use of some for external application on the target site.

- b) Mechanical Devices: Use of condoms by male or the use of loop or Copper-T by females.
- c) Physical Methods: Prevention of semen to enter female body at the time of orgasm by way of *coitus interruptus* or avoidance of intercourse during those days of menstrual cycle when ovum may be lodged in uterus.

2. Permanent

- a) Tubectomy
- b) Vasectomy

II. General Questions

1. Whether birth control is permissible from the Islamic viewpoint?
2. If it is permissible then in what circumstances?
3. What is the juristic position as regards the following situations:

3.A. Regarding Family Planning intended due to Following Reasons:

- 3.A 1) Under economic reasons so that children may achieve all kinds of betterment.
- 3.A 2) Due to this reason that smaller family has become a fashion today.
- 3.A 3) Due to occupational reasons so that the wife may continue her job or career involving business activities.
- 3.A 4) Due to social reasons when the wife will be compelled to shorten her social activities while rearing more children and she may deny to give birth to more children apart from the prevailing view of society that frequent pregnancy and the responsibility to rear more offspring affect beauty of

a woman to a great extent. Therefore, she intends to avoid this burden by birth control.

- 3.A 5) To develop gap between two issues in order to properly attend every child with full attention by the mother.

3. B Birth Control due to Medical Reasons:

- 3.B1. Mother: Birth of children, mother's physical health, mental health or dangers for her life.
Mother: Mental patient, or not able to care for children being physically handicapped.
- 3.B 2. Children: Potential danger and strong apprehension that the child taking birth would be a patient of fatal genetic disorders such as coelosomy, mongolism, schistocephalus, Huntington chorea, etc.
- 3.B 3. And, if there is an apprehension of these sorts of genetic diseases, what should be the role of a Muslim doctor?
- 3.B 4. What sort of approach the Muslim doctors should adopt as regards birth control? Whether the juristic position will be different in case of the Muslim and non-Muslim patients? And, if an unmarried patient approaches a Muslim doctor what should be his role?
- 3.B 5. Is there any difference from the Islamic point of view between operation for tubectomy or vasectomy and the temporary methods of birth control?

III. Questions regarding Abortion

4. Whether abortion is permissible from the Islamic point of view?
5. Whether there is a specific period in which foetus of a pregnant woman may be permitted to be destroyed?

6. Whether in the following conditions, conditional permission for abortion may be given:
 - 6.1 When the general and mental health of a mother is at stake or her life is in peril.
 - 6.2 When there is an apprehension of birth of an imbalanced child due to embryonic defect and physical disorder.
 - 6.3 When the medical investigation establishes beyond doubt that the child in the uterus would be an imbalanced entity.
 - 6.4 When it is proved by the medical investigation that the child in the womb is suffering from fatal diseases like anencephaly, hydrocephalus or other grave disorders.
 - 6.5 When the woman in question has become pregnant as a consequence of forced rape and wishes to abort the untoward child. It may be noted that due to permissive society, Western way of life style and availability of legal permission for mutually agreed sexual relations among unmarried people, the number of rapes have increased in society, out of which a number of them are forced upon women and they might not be interested to give birth to a child conceived in this way.
 - 6.6 When the parents are not inclined for any more issue due to any reason, and still conception of a child takes place somehow in spite of their precautions and now they propose to abort the unwanted child.

The relevant questions have been gone through in detail. In the introductory note, two types of methods of birth control have been mentioned. The first situation deals with the temporary methods

intended to prevent pregnancy for a short period and the other category of birth control methods deals with creation of permanent deficiency in man or woman to conceive a child. Under the Question No. 3 such motives are mentioned for which family planning is adopted. In 3 (B) the questions arising as a consequence of medical grounds of birth control are referred to. In Question 3B5 the juristic judgement has been sought while identifying practices of permanent birth control. Finally, the questions have been posed regarding the juristic position on various necessities of abortion. The Question 3B4 deals with the Islamic instructions for Muslim doctors regarding family planning and abortion.

Before turning to solutions of these queries, it seems necessary to consider some of the guiding principles, which are basic for the search of Islamic judgement in this regard.

1. Procreation and perpetuity of human race comprise important objectives of marriage and the basic necessities leading to Islamic judgements are the preservation of the Faith, life, respect and self esteem, human race and property. Hence, any such practice, which goes against the objective of sustaining human race or comes in the way of its continuity is against Islam and hence would be unacceptable.

2. Every Muslim has faith that Allah is the Creator of entire universe and He is the only Lord and Sustainer and Provider therein. It is on the part of Him only to provide sustenance and sustenance to all the creatures on the earth.

3. Allah is the Absolute Owner of universe, All Powerful, Benevolent and Merciful and All Knowing and the Wise. He puts balance in everything He created. He is the same Lord who keeps balance in the production and requirement. With the increase in human population, the simultaneous increase in the quantity of food production and addition of ever increasing human food would hardly decrease the quantity of food production as compared to its

demand. And, if any such difference were observed it would be due to lack of human knowledge or due to inequitable distribution of resources. The Creator of universe has clearly mentioned in the Qur'an that He has infinite treasures of everything with Him, but He unfolds natural resources only in a balanced and measured way. That means, the increased necessities would certainly lead to discovery of hidden resources. And, when human beings consider the rise of human population on the basis of statistical knowledge they are frightened what provisions will be available for them in future to eat while forgetting that there is no limit to the hidden treasures of the Creator Lord Who has taken up the onus of sustenance of His creation on Himself?

4. It is also an established fact that whenever the food scarcity is observed it is usually artificial and man-made. Either the food produced is destroyed to keep the food price up to a high level or man is not valuing available bounties and a lot of food which could feed several people is usually thrown by aristocrat families in the dust bins or to the dogs. In this way, the unequal distribution of food products is the basic reason for the so-called food crisis.

5. In spite of all the scientific and technological advancement it is not possible to perfectly ascertain the maximum production from an agriculture land, that means, it cannot be fixed that one area of land would not produce more than 25 quintals of wheat. It is possible to increase such a production with the advancement of agricultural sciences, perfection of irrigation system, development of better fertilisers, invention of more appropriate insecticides and with the progress of other allied sciences. Moreover, discovery of several other food items may be possible in the background of developments in science and technology, fulfilling the dire needs of increasing population, which are yet unknown to man.

6. In the light of Malthusian and new Malthusian theories, the arithmetic progression of food resources and geometrical progression of human population has been shown over the years.

However, this apprehension of gape between the supply and demand has been proved unsubstantiated on the anvil of time and in the light of past experiences.

Family Planning

The concept of family planning intends to by limiting human population and by regulating members of a family. Apparently, there will be a need of birth control for this purpose. There are several methods and techniques of birth control referred in the questionnaire.

The most serious reason for family planning is said to be the economic one, which while starting from Europe is now constantly propagated in the Asian and Islamic countries as well. The second most repeated point in this regard is the standard of life, considering that the increase in population and family members leads to lowering of standard of life. It may be understood on the basis of written principles that delimitation of family structure on the pretext of economic reasons is in discord with the concept of faith on Allah as the Provider of sustenance. Therefore, it is totally unacceptable from the Islamic perspective. Similarly, the implied meaning of standard of life presumes that the present generation is putting obstacles in the way of next generation being apprehensive of sacrifice of life standards, which is absolutely a selfish motive. And, the matters pertaining to standard of life have been classified as *tahiniyat* in the terminology of Jurists or in the category of *fudhuliyat*. It does not appertain to the basic human needs. Contrarily, exigencies of the continuity of human race are understood to be a very essential and basic matter. Hence, decorative and cosmetic things and the attempts to elevate the so-called standard of living up to an unnecessary point are hardly acceptable from the Islamic point of view.

While considering Item Nos. 2-4 in the Question No. 3A, it can be said that the Islamic law cannot accept excuse of a woman in

giving birth to more than the understood number of children on the pretext of it being a fashion or due to its coming in the way of persuasion of career and continuation a professional life or due to the reason that the concerned woman is engaged in social activities. The fashion and commonly accepted norms are accepted only when they are not going contrary to the teachings of Islam. Any such fashion, which is diverging from the Islamic law, remains unacceptable. According to the traditions of Prophet Muhammad (peace be upon him) the augmentation in human race is a virtue and to consider it something untoward is nothing but an evil in itself, which should be changed and not the Islamic *Shariah*.

Social engagements and economic activities are keeping woman out of home most of the time and are presumably those western mischiefs, which go against the objective of creation of woman. The exhibition of woman in clubs and discotheques and her “acclaimed” negligence of household responsibilities is that gift of the western culture which is leading the entire society to an ultimate suicide. In no way Islam can support such tendencies. So long as woman’s engagements for career or profession are concerned, the responsibility of earning goes to her male counterpart. Although, Islam considers the freedom of woman in the dispensation of her affairs and allows her to undertake business or professional activities within the limits ordained by the *Shariah* and to enhance her personal incomes; but, the problem starts when she goes beyond a prescribed limit of “love for property” and while ignoring the basic objective of her creation. Obviously, here, woman is intending to increase her income and property while abandoning her natural obligations. This situation will not be appropriate. However, if a woman is fulfilling her basic objective of creation and managing the prescribed household affairs, still finds time and energy to carryout some professional career or remain engaged in some social activities within the Islamic framework then there is no blame on her. Similarly, if a woman is forced to earn due to certain circumstances and multiplicity of children is found an obstacle in carrying out her desired

occupation, then, her case will be an exceptional one. And, the *ulema* may allow such a woman, who is forced to earn livelihood for the sustenance of her children, husband and other family members as her obligatory duty in some pressing situation, to make use of temporary methods of birth control. However, this should not be taken as an instance for those women who are working to reach to higher and still higher standard of life or to have more and more money while neglecting her nascent obligations and the responsibilities ordained by nature to continue the human race under her supervision as mother, under whose feet there lies the paradise. You may find an affirmative response from the *ulema* in the above-referred exceptional case in the edict of Darul Ifta, Mazahirul Uloom.

The wish to keep lesser children, to maintain youthfulness and beauty by a woman does not seem proper from the Islamic point of view. The real beauty of a woman transcends in her children providing her a lasting feeling of beauty and compliment whereas the apparent beauty of a woman may be badly affected simply by an ailment. Indeed, beauty is not something to be boast of and, just for the sack of this ephemeral thing, woman ignores her natural responsibilities or her husband so wishes from her, then the contraception cannot be permitted. You may refer in the opinion of the well-known religious scholar and learned teacher of *Hadith* and Jurisprudence at Darul Uloom Nadwatul Ulema, Lucknow, in which he discussed the opinion of Imam Ghazali, and commented on it in detail.

According to the Question No. 3A5, when the problem of adoption of temporary methods of birth control for developing gape between successive pregnancy is undertaken then, the situation takes such a shape that when a woman is nourishing and breast feeding one child and any conception in that period may affect rearing of the baby, naturally this situation would be regarded as “preference of the interest of the existing and known, over that of the prospective and unknown”. Hence, this sort of practice would be permissible.

In the responses of all the *ulema*, the opinion in this regard is affirmative.

Birth Control on Medical Grounds

In the Question No. 3 (B), the referred dangers of health are honestly endorsed by a competent doctor and the apprehension of emergence of those ailments is very strong then the practice of temporary methods of birth control will be permissible. The response of all the *ulema* is uniform in this regard. And, there are exceptional cases, based on such principles of jurisprudence as “compared to human interest”, “apprehension of corruption,” “removal of injurious effects preferred over available gains” and the selection of lesser evil in comparison to greater evil”, etc.

Tubectomy and Vasectomy

That is, permanent damage of procreative ability of man and woman is an offense and the possibility that this disability might be revived is a distant one and practically difficult to be carried out and those who are affecting birth control in society would hardly remain positive to allow such a revival of procreative ability. There is an agreement of *ulema* on the prohibition of such methods.

Abortion

Abortion is prohibited in principle. And, the abortion after the union of life with the foetus is tantamount to murder. All are agreed about this. However, conditional permission has been given in a special situation for clinical termination of pregnancy before that union, which is an exception and it is accepted due to dire human need.

In the Question No. 3, the items 6.1 and 6.4 are accepted as the excuse for the permission of abortion, and abortion is permitted by *ulema*.

In 6.5, that is, if a girl becomes pregnant as a consequence of her rape, then Maulana Burhanuddin permits abortion up to 120 days of the conception, i.e. before union of soul with the clot. And, this is also the opinion of Maulana Abdul Aziz, Mufti Mazahirul Uloom. I am also in its favour because if unmarried girl becomes pregnant due to rape then her pregnancy would be leading to her life long social persecution and it would be better that she must be permitted to opt abortion within 120 days from the day of rape because the conception has not yet become live. However, if the spirit has been blown into the conception then it is a greater injury to destroy it by abortion than that injury in which the girl would be, since it would be equal to killing of a living person, and can never be permitted. And, if the conception is acquired due to fornication in which girl's consent was also there, then she must bear the punishment in the form of social rejection and should not be allowed to throw a future person into the valley of death. In the 3 (F), the unwillingness of parents to conceive a child is such an untoward desire, which cannot be endorsed as an excuse provided by the *Shariah*. All the learned respondents are unanimous on this point.

In the 3 (A), some of the answers allow abortion within the period of four months if there is no one to look after the child to be born. Others are not affirmative in this regard. I am inclined to have this opinion because if God is giving a chance to some one to come in this world then He will also provide one's subsistence. And, there is a positive tendency in our society where people come forward to help such children reared. Hence, just on the basis of an imaginary problem abortion should not be permitted.

The doctor's advise of birth control to patients would be permissible only in those circumstances in which techniques of

birth control and abortion stands permissible according to the Islamic law. Tubectomy or vasectomy is not permissible, hence it would not be allowed for the Muslim doctors to advise such methods. And, any attempt in the discontinuity of human race is tantamount to disgracing of the human right. Hence, no difference can be made on the basis of faith. Some of the responses keep this difference. In the opinion of the author, this difference is no proper and for a Muslim doctor all patients are equal whether they are Muslims or non-Muslims. Therefore, it is not permissible to harm the procreative ability of a Muslim patient, so it must not be permissible for a non-Muslim patient as well.

In the following pages we will take stock of the responses of *ulema* in detail along with their logic and the basis of their deductions of certain Islamic injunctions, which acquire a documentary status in my opinion. It is believed that the readers will take full advantage from this material.

Response-1¹

It would be pertinent to distinguish at the out set between the temporary and permanent types of the contraceptive measures. So long as the permanent measures such as vasectomy and hysterectomy, etc. are concerned, there is no doubt about their being non-permissible and the basic sources of Islam, i.e. the Qur'an and *Sunnah*, have enough instances in this regard.

Permanent Contraception

It has been reported in several sound *Ahadith* that the Messenger of Allah (peace be upon him) was approached by a number of his Companions to seek permission for castration with a wish a completely remain devoted for worship (without burdening themselves in the mundane affairs like marriage). He did not give

¹ Based on the write-up of Maulana Khalid Saifullah Rahmani.

permission to them and declare it a punishable offense in these words: Men and animals shall be saved from castration and there shall be punishment for this.¹

This castration is a bright instance of contraception and it is an unsubstantiated claim that its validity emanates from the fact of its being the incapacitation of 'sexual power' and that it has no relation with the 'procreative ability'. That is why it becomes evident from the explanations on the grounds of coitus, and while thinking possibility of intercourse in accordance with this opinion they do not classify it as *majbub*. Not believing in the loss of all sexual power necessarily with castration, their denial in this regard is a proof that they do not term it prohibited due to loss of coital power.

Another thing is that there is no significance of coital power and sexual urge in themselves. It is only a means. The real importance rests only on the purpose, for which this ability has been bestowed to human beings. So, presumably, if the reason for disallowing castration has simply been to prevent people from destruction of their sexual powers, then the suspension of procreative function of human body would be regarded even more prohibited, because if the means are forbidden then what to speak about their very purpose? Perhaps this is due to this reason that when the Jurists have passed the decree for the compensation of destruction of the coital power, they used the phrase "killing of lineage", i.e. *li fawat ul-nasl*. Secondly, it is a "Change in Creation of Allah".¹ Although there is a difference of opinion in the explanation of 'Change in Creation', however, this common agreement among the exegetes becomes apparent that any change which alters the purpose of its creation or burdening it with such a function which would be contrary to its nature is 'Change in Creation'. Obviously, the birth control and relevant operation completely takes away the objective for which reproductive organs are present in male and female

¹ Al-Ahkam ul-Sultaniya li Qazi Abi Hasan al-Mawarid.

bodies. And, the way the Qur'an has used the phrase "*fatu harthakum*" i. e. go to your tith, has made the birth control measures explicitly understandable in the wake of the concept of 'Change in Creation'. The comment of Shah Waliullah makes this even clearer.¹ Therefore, a lot of references may be found in the literature of Jurisprudence, which establishes the destruction of procreative power as an offense of Change in Creation.

And, whatever affliction on the body of others, which is taken to be an alteration in nature, must not be permissible for one's own self as well, since both murder and suicide are prohibited, and in Fatawa Alamgiri the latter has been deemed even more severe.

Therefore, in no circumstance the permission for tubectomy or vasectomy would be given and even if the situation is very compelling on medical grounds then permission for temporary methods would be consented. And this will be considered enough. Hence, the answer to the Question No.5 is now complete that the conditional permission for temporary contraception might be given but the permission for permanently acquired procreative disability would not at all be given.

Temporary Birth Control

The temporary situations of birth control (vide Question No. 1-3) making the use of condom and loop are regarded akin to *Azl* and a considerate thought about medicines of both external and internal use will also put them in the same category. It is because, *Azl* and the contraceptives like this prevent semen to enter into uterus and the use of ointments or drugs also kill sperms or ovum to prevent fertilisation. Hence, the status of these contemporary techniques must be considered equal to that of *Azl*.

And, now, so long as the question of *Azl* is concerned, it has been narrated from Abu Hanifa that he thought it to be permissible even without considering it reprehensive (*Makruh*) whereas other

eminent jurists consider it either odious or simply allowable. Imam Tahavi among Hanafites and Imam Ghazali among Shafaites are more affirmative about its being permissible. However, whatever Allama Ibn Hazm and Ibn Abi Shiba have narrated from eminent Companions, it seems to be at least reprehensive, i.e. *Makruh*. (Al-Mohalla, vol 11, p 391-92, author vol 4, p 22). And, Hafiz Ibn Humam writes that even among the Hanafi jurists, some definitely consider it to be reprehensive.

ي بعض أجوبة المشائخ الكراهة وفي بعضها عدمها

And, Mulla Ali Qari while explaining this statement of *Hadith* that “This is like a minor castration” writes that:

ذلك لا يدل على كراهة العزل بل يدل على الكراهة
This hardly proves Withdrawal as permissible.¹

Again, the tone of *Hadith* and constant use of the word reprehensive (*Makruh*) in the books of Jurisprudence as regards *Azl*, makes it evident that it is strongly reprehensive (*Makruh tahrimi*) and cannot be allowed without any valid reason. Obviously, economic reasons, compulsions of fashion and social engagements of women are not those things, which have the status of “valid excuse” or “valid necessity” in the *Shariah*.

So long as the economic compulsions are considered, that it will be difficult to take care of more children due to bad economic conditions, they are openly against the Islamic concept of provision. Such a view was prevalent during the pre-Islamic days.

The Qur’an has pointed out this in these words:

لا تقتلوا أولادكم خشية إملاق نحن نرزقهم وإياكم

¹ Muratat al-Maftih, 3:441.

Do not kill your progeny due to fear of property.
We feed you and to them too.¹

And, in another place, the Qur'an further goes on to say:

لا تقتلوا أولادكم من إملاق

Do not kill your progeny due to property.²

Allama Ulaish has commented on this verse as “This is an indication of the fact that what to consider the fear of economic destitution, even if a person is right in it, he is not allowed to slain his progeny, because Allah guarantees the provision for it”.³

Prophet Muhammad (peace be upon him) said:

من ترك التزويج مخافة العيلا فليس منا

The one who abstains from marriage due to fear of offspring is not from among us.⁴

Imam Ghazali commented on this *Hadith* thus:

هذا ذم لعلة الامتناع لا لأصل التارك

This is not a remark on marriage but on the motive of its renunciation (i.e. not to beget offspring).⁵

And to keep a “small family” is also against the spirit of Islamic law, it is because the Prophet has said:

¹ Qur'an 17:31.

² Qur'an 6:152.

³ Ruh al - Maani, 8: 54.

⁴ Ehyaa ul-Uloomudin 2:22.

⁵ *Ibid.*

تزوجوا الودود الولود فإني مكاثر بكم الأمم
Grow in more progeny since I would like that my
Ummah should outnumber others.¹

Hence, such an intention would go contrary to the desire of Prophet (peace be upon him). In this way the social activities, which are not that much desired of woman, cannot be taken as a valid excuse. Similarly, for the longevity of beauty and youthfulness of a woman, it is not proper to allow a reprehensive thing (*Makruh*) or prefer cosmetics as compared to what is desired by Islam.

So long as deferring of pregnancy is considered, to create gape in the subsequent issue, it may be permitted because the conception during suckling period may harm the upbringing of the existing child. And, when such a situation arises, Jurists have even given permission for abortion in certain conditions.

امرأة مرضعة ظهرها حبل وانقطع لبنها وتخاف
على ولدها الهلاك وليس لأب هذا الولد سعة حتى
استاجر الظئر يباح لها أن تعالج في استئزال الدم
مادام نطفة أو مضغة أو علقة

If the lactation of a nursing woman has ceased due to new conception and the mother fears harm of her suckling child, and the father is not in a position to make any other arrangement for nourishing the child, then she is permitted to abort the conception in whatever stage it is.²

Since abortion is a very serious matter, the Jurists have imposed these preconditions. As abortion is a graver thing as compared to precautionary use of contraceptives for deferring a pregnancy, the

¹ Abu Dawood.

² Al-Fatawa al-Hindiya, 4: 112.

Shariah has permitted these techniques without above said conditions necessary for abortion.

In case of threat to the mental and physical condition of mother, and the consequent improper rearing of child and when the confident opinion of a competent physician has been sought regarding the hereditary diseases faced by the conceived child, are in themselves not such excuses, which may be said condemnable (*mazmum*). Hence, in such a situation the use of contraceptives for temporary birth control may be permitted. There is a reference in a *Hadith* regarding a companion who sought permission for *Azl* on the ground that it would prevent harm to the child during suckling period. The Prophet (peace be upon him) has not shown any direct disapproval while saying that had it been something harmful it would have harmed the Romans and Persians.¹ From this *Hadith* what is apparent is that on the ground of valid reasons permission for it, even on the basis of apprehension of disobedience of offspring.

رجل عزل عن امرأته بغير إذنها يخاف من الولد
السوء في هذا الزمان فظاهر جواب الكتاب أن لا
يسعه وذكر هنا يسعه لسوء هذا الزمان.²

If there is a strong possibility of hereditary disease of the conceived child, confirmed by sure medical investigation, then use of contraceptives will be valid, as has already been stated. And, if it is valid then assistance in this must be even more recommendable (*mubah*). Therefore, any cooperation of Muslim doctors in the respective case would be permissible and even better in certain situations.

¹ Shahi Muslim.

² Al-Fatawa al-Hindiya, 4: 112.

As regards the question about cooperation of the Muslim doctors, it should be noted that the juristic positions in various methods of birth control have been explained in the foregoing. Hence, in those situations where the birth control is not permitted, cooperation of Muslim doctors will not be valid. It is because, in these techniques, which are employed in the family planning measures, they have no other object and, therefore, any assistance in the non-permissible matter is considered equal to performing the same act. It is evident from the instances of Jurisprudence that it is not proper to get involved in any sinful act. However, if some one happens to accomplish such an act having no evil motive and the same is used for an evil purpose then there is no blame on the accomplisher. That is why it has been mentioned in the *Khulast ul-Fatawa*¹:

ولو أجر نفسه من ذمي ليعصر له فيتخذ خمرا يكره
لقوله عليه الصلاة والسلام لعن الله في خمر عشرا
ولو أجر ليعمل في الكنية فلا بأس به لأنه ليس في
عين العمل معصية

If a person, hired by a *zimmi*, manufactures wine for him, then his act will be treated as reprehensive in the wake of this *Hadith*: “Allah’s ten times curse be upon the one who is engaged in distillery”. And, if he is employed in a church then there is no sin in it.

And in this regard, the position of both the Muslim and non-Muslim patients is equal, since cooperation in any evil work is not permissible even with the non-Muslims in spite of the fact that it may be valid in their religion. It has been said:

¹ *Khulast ul-Fatawa* 4: 346.

رجل له أب ذمي أو امرأة ذمية ليس له أن يقوده
إلى البيعة وله أن يقوده من البيعة إلى منزله لأن
الذهاب إلى البيعة معصية وإلى المنزل لا.¹

Abortion

In order to ponder over issues related to abortion we should take into consideration its various stages. The Jurists have classified these into three categories. Firstly, the conception has become live. Secondly, although the foetus has not become live but its various organs have appeared. Thirdly, the situation before the second stage.

1- There is a consensus among the Jurists that abortion is forbidden once the spirit is blown into the foetus and it has become like a living person. Ahmad Ali Maliki is of the opinion that:

والتسبب في - إسقاطه بعد النفخ الروح فيه محرم
إجماعاً وهو من قتل النفس

And, its reason being that abortion of foetus after its union with soul has been considered forbidden by all since it is a virtual murder.²

And in Fatawa of Ibn Taimiya (4: 217) it has been argued:

إسقاط الحمل حرام بإجماع المسلمين وهو من الواد
الذي قال تعالى فيه وإذا المؤودة سئلت بأي ذنب
قتلت.

¹ *Ibid* 4: 347.

² Fathul Aala al-Malik 1: 399.

2- Abortion is not at all permitted even in the second stage of foetus when it has acquired development of organs but the spirit is yet not blown. Allama Ibn Abidin Shami has expressed that:

There is no doubt that he has burdened himself with the sin of murder if the foetus has fully developed.

And, Allama Ibn Hazm has reported from Ibrahim Makki that if a woman herself aborts her foetus by taking some drug or by using something physically damaging it in the womb then she must pay *kaffarah* and that is to buy a slave and liberate him or her. (Al-Mohalla 12: 378). Obviously, the use of word “*hamal*” involves its this stage as well.

Qazi Khan has written a very nice thing in this regard. It is narrated from him that:

There is no doubt about the abortion being forbidden if it is executed after that stage of the foetus when it has already acquired life, i.e. spirit is blown into it. But, it is also not permissible if it is executed before that stage because up to that time foetus remains an inseparable part of the woman bearing it and would be regarded equal to her organs. And, since it is not valid to kill any person, it is similarly forbidden to mutilate any part of one’s body. It will be like interfering untowardly in the Creation of Allah.¹

3- Any action by which a damage is inflicted upon the conceived clot in the uterus of a woman so that it may no more possess ability to take birth and the clot and its blood get aborted,

¹ Fatawa Qazi Khan, Kita al-Hazan w al-Ebaha.

then such an action shall not be considered proper. That is why Ibn Abidin Shami narrates from Ali Ibn Musa that:

أنه يكره فإن الماء بعد ما وقع في الرحم مآله الحياة
فيكون له حكم الحياة كما في بيضة صيد
الحرم. Once the semen has entered into womb its
future is a new life, hence it will have the judgement
applicable for a living person, in the way that
damage of a hunt is considered equal to the hunting
of a complete bird or animal in the *Haram* (i.e. The
sacred area in and around Makkah and Madina).¹

Ahmad Ali Maliki has made this issue even more explicit in this way:

لا يجوز استعمال دواء المنع الحمل وإذا أمسك
الرحم المنى فلا يجوز للزوجين ولأحدهما ولا للسيد
التسبب في إسقاط قبل الخلق على
المشهود. Medication intended to prevention of
conception is not permissible. And, once the
conception takes place abortion is not proper for
both the wife and husband, even though life has yet
not appeared in the foetus.²

From these explanations, answer to the former two situations has been given, that is abortion is not permissible in principle so long as the Islamic law is concerned and there is no stage after the conception when it would be considered valid. However, there are various levels of this negation. In the first situation it is forbidden and the second stage is less serious in this connection and the third stage is even lighter in its evil impact.

¹ Raddi Mukhtar 2:522.

² Fath ala al-Malik, 1:399.

There are some more excuses, which cannot be entitled as valid for instance, just the wish of parents to shun any more children. However there are some other circumstances, which may be regarded as valid excuses to some degree but in the view of Islamic law they are not acceptable. For example, the conception acquired due to rape which would be regarded as an injury (*zarar*) because it would deprive the child from father's affection and care and to remove an injury, some matters may be deemed as valid excuses, however, this matter is not that serious in the view of *Shariah* to permit abortion. It may be seen that in the time of Prophet himself (peace be upon him) the *lian* (separation of wife and husband when the former is seen by the latter in an open adultery) has been referred two times, naturally in such a case, the alleging husband is saved from the burden of a child so conceived. Moreover, the well-known case of Ghamdiya (may she be in peace) is also there in which she accepted conception of an illicit foetus. In both these cases that sort of injury is present.

Had the abortion been valid and had it been an injury of that degree making it acceptable, then the Prophet himself would have advised for abortion to remove the injury, whereas it is known from the books of Jurisprudence that the technique of abortion was known at that time as well. Although this is not an explicit proof, and "avoidance of the Prophet" to punish her for the confessed offense has been variously understood by the Jurists and expert of *Ahadith*. Nevertheless, the above-explained situation may be deemed as an instance for further derivation in this regard. And, the overall approach of the Islamic law supports this.

This excuse that the pregnant woman, being mentally and physically handicapped, is incapable to bring up the prospective child, is also not appearing to the author as acceptable, because if the mother is not capable then from the principle of right of *hazanat* (rearing), the nearest relatives should take care of the child and the solution will be applicable here as well which would be

necessary in the case of a woman who becomes mentally or physically disturbed or disabled after pregnancy.

Some medical excuses often sought are concerned with a situation in which it is confirmed with certainty by proper medical investigation that the child in the womb is going to suffer due to a serious hereditary disease, or may be with a developmental deformity or will be physically imbalanced, and the conception has yet not crossed that stage when the foetus becomes live, then abortion can be permitted. That is why; the Jurists have given permission on medical ground for the abortion of a foetus before it is bestowed with soul.

العلاج لإسقاط الولد إذا استبان خلقه كالشعر
والظفر ونحوهما لا يجوز وإن كان غير متبين
الخلق يجوز وأما في زماننا يجوز على كل حال
وعليه الفتوى.

If it has become evident that the foetus has fully grown, as shown by the development of hair, nail, etc., then its termination is not permissible; and if it is not so grown then abortion remains permissible. However, in our age, it is permissible due to circumstances. And, the *fatwa* is on this.¹

And, the instance of it being a valid excuse may be seen in the juristic permission of abortion in certain situations before the stage of *instabanti khalq*, so that the upbringing of the suckling child should not get affected. And, in the situation under discussion, in which the prospective child is going to suffer his or her own self, seems graver than the former, hence, this will certainly be a preferred case for such permission. However, there will be no permission once the spirit is blown in the foetus.

¹ . Al-Fatawa al-Hindiya 4:112.

It is because it would be like the situation when a person is killed because he is suffering from a fatal disease or he is physically imbalanced. This situation cannot be guessed on the post-spirit status of the conception since there is a pronounced difference in the destruction of an existing thing and that of a non-existing one. In case of a situation when life of mother is at stake, the Jurists have elaborately explained the permission of abortion, that the foetus must be brought out after mutilation but they have forbidden to do so once the conception becomes live.

وإذا اعترض الولد في بطن الحامل ولم يجد وسبيل
استخراج الولد إلا بقطع الولد أربا أربا ولو لم يفعل
ذلك يخاف على الأم قالوا إن كان الولد ميتاً في
البطن لا بأس به وإن كان حياً لم نرجو إن قطع
الولد أربا أربا.

If there is an apprehension that the foetal organs have developed and there is no way left to safely bring the foetus out then in that condition it may be severed into pieces and removed. And, if there is a threat to the life of pregnant woman if it is not brought out, then the Jurists are of the opinion that in such a situation there is no harm to do so if the foetus is already still or dead. But, if it is alive then there is no justification for its mutilation.¹

A similar instance is the one in which Qazi Khan and Allama Shami has declared that foetus is a part of mother and the Jurists have permitted to severe one's organ for the purpose of medical treatment. Hence, here also, abortion of the foetus will stand permissible.

¹ Al-Fatawa Al-Hindiaya 4:114.

The author thinks, if the foetus is live in the uterus of mother and it is not possible to save her life without undergoing the clinical termination of pregnancy (MTP), in that condition this permission should also be there. It is because while comparing these two, the mother's death is a greater injury and the death of foetus will be a lesser one. Moreover, the existence of mother is an established fact where as that of the child a prospective one. Its simile may be found in the instance when the killing of such Muslims becomes permitted whom the enemies are using as cover in a war, because sacrifice of some Muslims should be acceptable as compared to the victory of the enemy and the consequent loss of a Muslim territory to its enemies.

Here, this suspicion arises that in case of a reprehensive situation, the Jurists have not permitted the odiety (*ikrah*) of the offense of murder, and even if it happens on the basis of reprehension, then compensation of murder would be obligatory. Its imperative in the matter under discussion would be that there should be no permission for abortion in the post-soul stage of the foetus. Its answer is that since the existence of both the reprehended and its victim is equally real, hence, it would not be permissible to kill someone to save one's own life. But, in the present case, the existence of one (mother) is real and observable whereas that of other (foetus) is virtual and non-observable. Therefore, destruction of prospective thing would be bearable in comparison to that of factual one. The proof of virtuality of foetus inside mother is that there is a consensus among Jurists that its destruction would not obligate *qasas*, nor it would be taken akin to other matters of real worldly existence, nor like the affairs of a living being.

And, similar to the juristic injunction in the case of survival of a pregnant woman whose life is at stake, the same sort of injunction must be admissible in the case where there is a strong apprehension of mental disorder as a consequence of pregnancy. It is because it is a juristic principle that whatever injunction is applicable to one person, must be applicable in the situation where a person is

deprived of the same kind of benefit. Therefore, destruction of one benefit from something would be equal to the whole benefit from it and, therefore, the compensation (*diyyat*) would also be the same.

However, the injunctions regarding *qasas* would be different since *qasas* is from among those matters, which becomes non-applicable in case of doubt. Therefore, the danger of “mental disorder” will be taken equal to the apprehension of life. Nevertheless, the apprehension of general health will not be sufficient for this since every pregnancy is a potential threat to the life of woman.

Response-2¹

It is not permissible to make use of birth control measures without a dire necessity. And, if there were such a juristically permissible necessity then the temporary use of contraceptives would be allowable. The techniques of birth control having temporary effect on reproductive capabilities of wife or husband will be permissible, in cases when the woman in question is weak, she is incapable of bearing pregnancy, there is an apprehension of unbearable pain at the time of delivery or danger of harmful effect on the suckling child due to pregnancy, wife being obstinate and disobedient leading to the intention of husband to divorce her, frequent and long tours of husband due to certain occupation which may affect proper upbringing of the prospective child, life in an enemy country (*dar ul-harb*) where suitable upbringing of Muslim children is not possible, and in similar cases. Unnecessary use of such methods will be reprehensive (*Makruh*) in spite of wife’s permission.

A 1-2. The use of contraceptive drugs due to economic reasons or on the motive of fashion is against the *Sahriah* and also against the etiquettes of Faith. Hence, whosoever has faith on Allah must not think of using them.

¹ Based on the note of Maulana Mufti Abdul Aziz.

A3. If a woman is compelled to earn livelihood for her family and has become weak due to multiplicity of children and there is an apprehension of further enervating or that she will not find sufficient time to take care of children, then there might be a relaxation to make use of temporary methods of contraception.

A4. It is improper to go for birth control measures on the basis of accommodating social environment and pressures of society or to maintain cosmetic appearance and the charms of beauty.

A5. There is no objection for contraceptives intended to develop gape in the subsequent issues or pregnancy so that the existing child may be properly brought up.

B1. If it becomes evident from the angle of physical conditions and health that the mother's health will be badly affected as a consequence of pregnancy or her psychological status will be drastically changed or her life would be endangered, then, in such circumstance it would be proper to opt for birth control measures.

B2. If there is a strong apprehension that the prospective child will be suffering from a genetic disease and his or her upbringing seems difficult for the parents, then it would be regarded proper to practice contraceptives.

Question No. 4. The measures of temporary birth control are considered on the basis of Necessity (*zarurat*). When a patient is inclined to use contraceptives due to certain valid reasons then the doctors should cooperate with them in this regard and there should be no distinction between a Muslim or non-Muslim patient. Since unmarried male or female does not have this necessity so they must be prevented from using contraceptives and cooperation of doctors in such cases is not proper and it may lead to the opening of the flood gate for adultery and illicit relations in society.

Question No. 5. Since operation is causing a permanent effect on the reproductive capabilities of man and woman, therefore, it can never be regarded proper for a Muslim doctor to advise a Muslim patient for such an operation. However, it seems permissible in case of the non-Muslim patients in the light of the Qur'anic statement that "They will beget not but wicked disbelievers". (71: 27).

Abortion

1. Since abortion is contrary to the directives of *Shariah*, it cannot be permitted except in some very exceptional cases.

2 and 3 (A). According to the Jurists, a foetus acquires soul, and as a matter of fact life, after four months and ten days from the day of conception. Hence, after the post-soul stage of the foetus abortion cannot be permitted in any case except if the pregnancy is due to rape or if the woman faces unbearable pain at the time of delivery or the prospective child may suffer from a developmental defect or some hereditary disease.

Response 3¹

1. The birth control techniques causing permanent incapacitation of reproductive abilities are forbidden in Islam and should be considered nothing but fulfillment of a non-human (i.e. Satanic) plan of "Change in the Creation of Allah". And, also against the Prophetic injunctions "Procreate more and more progeny", "Castration of sons of Adam is forbidden", etc.²

2. The temporary measures are permissible in case of fatal disease of mother, or apprehension of unnatural pain and critical situation at the time of delivery or when the husband is facing some hardships.

¹ Based on the note of Maulana Abdur Rahman.

² Fatawa Alamgiri, vol. 4, P 338, 369.

3. The referred excuses are not proper even for temporary measures, which may be found at length in the following.

- 3.1. Under the economic reasons, it is not correct to think that every sort of betterment of progeny depends upon family planning's negative aspect, i.e. on birth control. This is against the basis of just system, contrary to the *Shariah* and that of nature, *fitrah*. It is a natural phenomenon that mother's breasts generate and increase milk only to feed a child. It is a proven fact that a family gets provision from the divine only on the basis of an innocent and weak child.

As is said:

Arabic

You are being provided and helped because of your enfeebled ones.¹

نحن نرزقهم وإياكم

We shall provide for them as well as for you.²

إن خفتم عيلة فسوف يغنيكم الله من فضله إن شاء
أن يكونوا فقراء يغنيهم الله من فضله والله واسع
عليم.

If they are poor, Allah will enrich them out of His bounties. And, Allah is sufficient for His creatures' needs.³

Some people are reluctant to marry while fearing how they will bear the burden of family? They have been consoled that they

¹ Tirmizi 1: 203.

² Qur'an 17: 31.

³ Quran 24: 32.

should not desist from marriage on the basis of such false fears. The provision of you and your family members rests upon Allah. May it that, by Allah's willingness, your sustenance may increase due to their fortune. Neither solitary life nor marriage are interrelated to the sustenance of man and not too that of any kind of impoverishment. Poverty and prosperity are based on the divine plan only.

Therefore, it is naturally, psychologically and Islamically wrong to consider appropriate future of a child merely on the basis of birth control. Indeed, Allah the Sustainer of All the Worlds, as the Qur'an says, has taken up the responsibility of constant provision of sustenance, "There is no moving creature on the earth whose sustenance is not upon Allah". Apparently, the economic means depend on the scarcity of means, and inequitable distribution of resources is responsible for the economic deprivation. To consider ensuing generation as its causative factor and to consider the non-existent responsible for the provision of existing one is nothing but a product of dominance of illusion.

For the establishment, perpetuity, and safety of a just economic order, numerical strength of police and military is after all beneficial for society. The national resources of a country and its administration maintain them. Public funds are also ready to support the cause of national interests by a wider cooperation. Hence, a person with larger progeny is actually serving a national cause by providing more human resources for the maintenance of the numerical strength of an army and must be suitably rewarded. And to remain oblivion of this responsibility is against the just system and to declare it an evil is contrary to the stability of the just system.

Birth control is also against economic interests of a nation. The progeny is just not coming with empty stomach, but also with two hands, various physical and psychological potentials, capabilities and talents of knowledge and moral aptitudes, astonishing outcome

of political thinking, etc., due to which the parents and the nation augment their economic strength and acquire prestige in the world. The birth control kills all these talents and humanity becomes crippled. The workforce is always essential and beneficial to run the industrial system. Now, industries are needed to accommodate the new inventions. There is a need to make provision for new and prospective industries.

Land, water and atmosphere of the earth is full with unlimited treasures, for which both brain and workforce is essential. A number of top brains among the Muslims and non-Muslims even now consider enhancement of human race as beneficial. The atheist Russia is also an admirer of multiplicity of population. In several countries, food grains are regularly destroyed to maintain a certain level of price. Already, a lot of people die of accidents in air, water and surface transport, or in wars and genocides and due to epidemics. Hence, to prevent enhancement of human race will severely affect economic prospects of mankind in the long run.

3(A-2) Fashion is an uncivilised and non-Islamic view because this in itself has no relevance. The present fashion is also not a universal one because it varies from country to country and region to region. Turk and Hijaz, Russians and Germans are opposed to each other. The French and their allies are planning to contain the population of highly populated countries so as to acquire complete dominance over them. The largest brothel is there in France, which opposes polygamy and larger families.

Al-Tantanvi was of the opinion:

When Germany, Turkey and Russia are for the increase in their population, for some of them it is obligatory upon adult male and female to enter into marital bond, then, obviously, they seem to be more willing for the growth of population than the

Muslims. Not at all, the Prophet of God (peace be upon him) used to say: “The more loving and more procreative woman deserves to be married by you”. And he further said: “I will be proud of my larger Ummah on the Day of Resurrection”.

Perhaps the following verse is appropriate on the financial assistance of the marrying couple and statutory fine on unmarried people in Turkey which reads:

أن يكونوا فقراء يغنيهم الله من فضلة

If they (unmarried ones) are in poverty, Allah will give them means out of His grace, for Allah is Ample-giving.¹

The verse which entirely abolishes the economic basis of infanticidal tendencies is perhaps this:

ال الله تعالى إن قتلهم كان خطأ كبيراً.

Allah says: Verily the killing of them is a great sin.²

Both in the ancient and modern times the basic drive for birth control remains to be the fear of impoverishment leading to the killing of one’s own children in various ways including the technique of abortion. The same drive is pushing man to the over use of contraceptives. However, this clause of the Islamic constitution is directing man to concentrate on his efforts in those areas by which productivity may be constantly enhanced by the grace of Allah, instead of maneuvering to contain the human population. According to this clause, it is a grave human mistake that he is inclined, now and then, to manipulate growth of human population while apprehending want of resources. This envisages human attention to the fact that sustenance ultimately takes its root

¹ Qur’an. 24: 32.

² Qur’an 7:31.

in Allah only, who settled mankind on the earth and favored man in various ways. As He was providing sustenance to the people of past He will be the Provider of the same in future as well. The experience shows that with the growth of human population the productivity of various cereals and food items also increases. Therefore, the unnecessary and untoward human intervention in the natural processes is nothing but an explicit absurdity. It is the effect of this teaching of Islam that the genocidal attitudes have never overtaken the Muslim mind.¹

The Qur'an makes this point:

إن ربك يبسط الرزق لمن يشاء ويقدر إنه كان
لعباده خبيراً بصيراً.

Verily, the Lord provides sustenance in abundance for whom, He pleaseth, and He straitens it for whom He pleaseth. He doth know and regard all His servants.²

That, Allah is aware of the conditions of His servants. He is ever watching them. Your Lord increases the provision of some and restricts that of others. Due to the law of nature expressed hereby and guided to, there is no chance to profess the idea of social equality amidst natural disparity which needed to be done away with for the establishment of a classless society. Contrary to this, the Islamic society that was established in Madina had a foundation of virtues and left people to live in a natural way on which Allah has created man, along with the naturally existing distinctions. And, the morality, behavior, laws and action of society should be according to the guidance of Allah so that the economic disparity and social inequality would not become the instrument of economic inequities and oppression, rather, it would become the basis of a number of moral, spiritual and cultural benefits, only for which

¹ Tafhimul Qur'an, 2: 11.

² Qur'an 17:30.

reason the Creator of universe has created the disparity. Man does not understand the latent motives of God. In the natural system of distribution of provision man should not intervene through his artificial means. To alter the natural equities with abnormal equities and to change natural disparity to the extent of oppression and injustice, both the extremes are wrong. The most appropriate economic system is the one, which is nearest to the God-given system of distribution of human provision. God has created man by the combination of a few elements such as carbon, nitrogen, oxygen, calcium, potassium, iron, etc., in the form of a miraculous being. In him are created astonishing abilities like feelings, emotions, consciousness, rationality, etc. Moreover, created are the splendid reproductive abilities by which billions of men came into existence with the same biological structure and function and with several genetic and individual qualities. He has devised a great plan and wise strategy of human growth on the earth and made unlimited natural powers on the land and in the sky, submissive to human activities, which is an evident proof of the Wise and Great Creator. Then, men have been divided into two types of traits, while giving them disparate biological, psychological and mental qualities and different emotions and urges at the time of their creation. And, again, the male-female proportion is so strong that pairs of each other, complete mental response to psychology and feelings, and a proportion of every gender with individual fixation of sons and daughters may be observed. Nevertheless, the numerical proportion is set in such a way that entire nation, whole city or a country do not grow either only males or females only. This remarkable order is not something arbitrary, rather a male finds his complement in a female and the vice versa. This is made the mechanism of perpetuity of human race and the basis of creation of human civilisation on the earth. The existence of culture and civilisation and growth of population is bestowed with the continuity of race. The Creator has not created sexual urges just to increase quantities of human beings as in case of animals but to form families, tribes and nations and through them to realise and enhance human civilisation on the earth. With this deep and wise

objective, the institution of marriage has got perpetuity for thousands of years.

- 3 A-3. The basis of any service is the exchange of remuneration. For that matter, the service of a woman to her kin in the parental house, to husband and in-laws after marriage and that to her children is in itself sufficient in the exchange of love and affection of thus served ones. The remuneration for certain needs to be received while serving out of home is not obligatory and essential for a woman. Her provision and other essential expenses are either on her husband or on her father. Even if the woman is wealthy still her maintenance is the responsibility of her husband. Her job may be found suitable to gain some comforts, that is secondary in degree, provided all her other responsibilities and obligations are fulfilled. The spectacular quality of woman is perhaps to give birth to children and to nurse them. Male cannot do this.

Vandalising this unique position of woman to deliver and nurture offspring is to undermine her potentials. And, debilitating feminine character of woman is against nature and against humanity. Jobs and entrepreneurship is the domain of masculine gender wherein male is more successful and to engage women in such fields while devaluing their obligatory function is really a stain on the prestige of them. This is also the status of industry. Industry may be deemed as the dissociation and rearrangement of things in the universe. Indeed, woman is that machine in the divine industry spread in the universe which presents a gift like man in nature. Male is lacking altogether that mechanism whereby human beings are moulded. This is the specialty of woman that only through her the great Creator is producing men of different designs, with different fingerprints and with disparate qualities. And, any harm inflicted to this unique machine of the Creator and its normal function is an open proof of rebellion against the Creator of universe. Therefore, procreative abilities of woman and her great talent in upbringing

future generation should not go out of our sight. However, under some compelling situations if a woman is forced to engage herself in an occupation then there is no harm.

- 3 A-4. It is a great and appreciable spirit for men and women to offer their services for the welfare of society. For such people, it is also better for the progeny of a family that father should engage himself in social activities and mother should take care of the house-hold. This arrangement seems feasible and good for the upbringing of children. Otherwise, the same young generation would be the social workers in themselves. Parents are model for these social workers. To deviate from this centrality of social work is an injustice on society. Moreover, society is always having upper and lower classes and considers the service to the weaker section separately, and then the whole society is indeed an isolation of a part from the whole. Increase in progeny is the enlargement of society, which may further enhance social activities.

So long as the thinking regarding beauty and maintenance of charms of a woman is concerned it is of common observance that the same gets declined with the first delivery and it is a gradual process on further issues. However, it is absurd to think that woman acquires an abrupt debility after successive deliveries. Her beauty and charms have more relations with her age, living conditions and psychological state than with delivery of her children. More than often, woman acquires and enjoys more attractive figure after some of the early deliveries than in normal life. Hence, this thought that just by the third or fourth child she will lose all her beauty and charm is simply unfounded. Male and female are provided with beauty and charm in every stage of life. So it cannot be proved from the only calculation that decline in the beauty and charm of a woman gets with the fourth child and nor with the first or second. The children only contribute in and expand the charm and beauty of parents. The longing for one's own beauty

and charm while preventing others to possess the same is containing the natural process of creation of a beautiful and wonderful world, and is nothing less than injustice.

- 3 A-5. The spacing of successive pregnancy is acceptable, however, it does not require abortion or limitation of number of children to just three or two. May those live long, who think of distancing pregnancy for better care of the existing children and long live the distancing itself! The Islamic *Shariah* seriously considers spacing of subsequent conception with a view to provide better opportunity to the suckling child to grow in full care and love of one's parents. It is known that the intercourse is harmful for the suckling child in the duration of around two and half years. To take precaution in this regard is suitable. The education of self-restraining is applaudable, whereas that of containing children is deplorable. Therefore, maintenance of spacing between the first and the second birth, likewise between the second and third, between the third and fourth, and so on is well enough to be practiced.
- 3 B-1. The directive of restraining for husbands of a mentally or physically handicapped wife is appropriate. Otherwise, the use of such contraceptives as condom, loop and the practice of *AzI* during the ovulation phase would be suitable for this purpose and another marriage of the husband may also be recommended.
- 3B-2. Self-restraining, avoidance of sexual relation and use of *AzI* are all right. The second marriage may be preferred.

إذا عزل الرجل عن امرأة بغير أمرها ذكر في
الكتاب أنه لا يباح قالوا في زماننا يباح لسوء
الزمان.

It has been referred that if a husband practices *AzI* without the permission of his wife then it cannot be considered as acceptable (*mubah*). However, in our time it will be taken so, because of worst situation.¹

3 B-3. It would not be objectionable for doctors to advise or help their patients for self-restraining and second marriage or if the patient is not prepared for that then application of chemical techniques, external use of things or use of pills in the situation visualised in the question.

3B-2,3.If the use of contraceptives intended for temporary prevention of conception when a woman is physically very weak, then it should be considered acceptable (*mubah*).

However, if the intension is to contain the size of family for any cosmetic reason then these objectives are not valid and, hence, cannot be regarded proper reasons for family planning.²

3B-4. The complete destruction of semen even without any apparent objective would lead to *diyyat* (compensation) as is said:

ضرب على الظهر فانقطع ماءه ففيه دية كاملة

If some hits, on the back of a person and the latter's coital power is lost as a consequence, then it shall obligate full compensation for this loss.³

Therefore, the doctor's role in the acquisition of permanent disability in procreation is not appropriate and neither they are liable to any recompense.

¹ Fatawa Qazi Khan 4: 369.

² Kifayatul Mafti, 5: 229

³ Fatawa Qazi Khan 4: 386.

3B-4. The Islamic position is equally applicable here for both the Muslim and non-Muslim patients as it is said “Castration of Adam’s sons is prohibited.” However, in Fatawa Alamgiri (4: 338) and Fatawa Qazi Khan (4: 369) the adage is like this “castration of Adam’s progeny is reprehensive (*Makruh*)”. From this it is evident that for all mankind the principle prescribed by the *Shariah* is one.

Due to hardships of time the temporary techniques based on certain chemicals may be permissible.

The prescriptions of doctors is generally based on their day today observation and on their guess but definite investigation is seldom accomplished. In spite of their strong apprehension of loss of life, some women have been seen delivering even more than four children, as has been recorded in some caesarean cases.

Abortion

1. Abortion of live foetus is forbidden in Islam.
2. From the modern medical researches it has become evident that normally a foetus takes 28 weeks in the womb to grow into a healthy and ready-to-born baby. In other words, this period extends to six and half months and a little more. Relaxation in this calculation has been given in the Islamic law for another six months. It is because, instead of doubting a woman of adultery and the baby as bastard, it is better to accommodate exceptionally delayed foetal development. Moreover, neither a doctor, nor a *qadhi* (Muslim judge), nor even a woman or her husband can surely tell about the exact time of conception. This view is also important here, that the total legal duration of pregnancy must have provision for some exceptional situations (Tafhimul Quran 4: 611). This duration is for the delivery of baby. The foetus becomes live after four months. Once, a woman gave birth to a child by sixth

months of the conception during the time of third caliphate. Reverend Usman, the *Khalifah*, gave judgement of pelting her. Then, reverend Ali advised him to change the decision of punishment while explaining the verses “the carrying of the (child) weaning is a (period of) thirty months at length” (46:15) and “The mother shall give suck to their offspring for two whole years” (2: 233), while deriving from these verses he has shown that the minimum period of pregnancy should be the remaining six months when thirty months are deducted by two years. Usman changed his decision. Ibn Abbas also consented on this explanation of the verses. (See Tafseer Ibn Kathir.) Hence, an abortion may be executed in dire need before the foetus acquires life and up to the time when there is no threat to the life of a woman.

3. All the seven different queries here do not qualify for the permission of *Shariah* to carry out abortion after the spirit has been blown into the foetus. In the pre-soul phase, the conception can be aborted due to some unavoidable situation. Strength after debility and weakness after rejuvenation is a law of nature, coming in the common experience. The verse “He give after weakness, strength” denotes that Allah provides organs to the human seed of semen and the shape (of human being) to a shapeless thing. Hence, it is not valid to kill a living being on this pretext.

Details regarding the Period of Abortion

According to the experts of human reproduction or gynecologists, the conception transforms from zygote stage to different embryonic stages and acquires real life features only after 120 days from the conception. Reverend Usman and Imam Ahmad consider this time to be 130 days when the union of soul takes place with the foetus. However, there is a consensus among the Jurists that the foetus does not acquire the soul before 120 days. Hence, abortion would be permissible in stern situations only, and that too before that period, i.e. up to four months from the day of conception. And, the human features and traits do develop in the foetus in the second

spell of four months. Hence, in this second phase of foetal development, the abortion stands unacceptable. The formation of some organs in this stage will qualify for the foetus a status of offspring and injunctions related to obstetrics would become valid. The injunctions concerning a complete person and those related to delivery of a child acquire relevance now. In this regard there is an accord among obstetricians and *ulema* that the stage of 120 days is very crucial in foetal development. Therefore, abortion may be acceptable in dire needs before that time and not after that. According to the Islamic law the period of living foetus is only six months, physically 28 weeks are required for full development. Imam Shami has said:

“The Jurists have written that it is permissible for a woman to remove her blood (foetal matter) from the womb so long as it is in the stage of *muzgah* (blastocyst) or *alqah* (clot) stage and no organs have appeared by that time. And, the Jurists have considered the period for this to be 120 days. That, up to that time the foetus is not a living thing so its abortion may be permitted. The same opinion has been expressed in al-Nahar. And, it is noted in al-Bahar that even before that period the development of organs may be possible, which is again corroborated by *Ahadith*. Accordingly, it may be understood that, when 42 days have passed on the conception then Allah sends an angel to give shape to the baby and to create ability of hearing and sight, and skin. And, this is also the opinion of physicians. That is why Shaikh Dawud has referred in his statement that from 32 to 50 days, the foetus acquires bones and by 75 days flesh is wrapped around them and other things also become apparent. He says, then, it is like vegetation up to 100 days and in 120 days it is like a sleeping animal. Then, spirit is blown into it. The *ulema* have this

agreement that the spirit is blown into the foetus after four months. Ibn Abbas was of the opinion that this period is four months and ten days, which is also accepted by Imam Ahmad bin Hanbal. However, there is no denial that the appearance of a 'new creature' is possible even before that time, because the union of soul is made once the creation (physical) is completed. A difference of opinion among the philosophers has also been reported that the spirit is blown in the conception after 70 days. But, the Prophet (peace be upon him) has said that firstly the natural spirit is blown into the foetus which may also be found in plants and then human spirit is blown into the conception.”

From some narrations extant in the literature of Jurisprudence, it may be found mentioned that abortion before four months of conception is permissible in dire needs and compelling situations.¹

Response-4²

1. Temporary

Such medicines which do not completely destroy the procreative ability but temporarily affect the out come of intercourse would be reprehensive (*Makruh*) if used without need and would be permissible (*Halal*) in the presence of a valid reason. The use of medicines of both the internal and external effects will be deemed equal, provided that no private parts of a woman become unraveled. The permission of such a temporary use has been hinted in the famous *Hadith*:

من لم يستطع فعليه بالصوم فإنه له وجاء

¹ Fatawa Darul Uloom, 1:187.

² Based on the note of Maulana Burhanuddin Sambhali.

The one who is not able to marry should keep fast.¹

In this statement of the Prophet (peace be upon him) a man has been allowed to postpone temporarily the primary mechanism of growth of human population, i.e. marriage, on the ground that he was not feeling capable enough to do so. This derivation from the *Hadith* is also possible that one can also weaken the urge for intercourse as a technique for temporary purpose. That is why the renowned Shafai jurist Allama Khattabi has derived from this *Hadith* the approval for the use of such drugs, which may reduce some, one's sexual urges. His particular statement has been narrated by Ibn Hajar in this way:

واستدل به الخطابي على جواز للعالجة لقطع شهوة
النكاح بالأدوية ... وينبغي أن يحمل على دواء
يسكن الشهوة دون ما يقطعها أصالة

And, Khattabi deduced from this that it gives justification for the abolishment of sexual urges, fulfilled in a nuptial bond, by using certain medicines. And, is also derived from this that there is a justification for channeling these urges without harming their very basis.²

B. It is permissible by mutual agreement of the spouses or in the presence of a valid reason. But, it would become reprehensive (*Makruh*) in the absence of mutual understanding or a proper excuse, as Allama Ibn Abidin has written:

أخذ في النهر ... أنه يجوز لها سد فم رحمها ...
ينبغي أن يكون حراماً بغير إذن الزوج

¹ Bukhari 2:758.

² Fath al-Bari 9: 94.

It is stated in al-Nahar that it is permissible for a woman to obliterate the opening of her womb, however, this is not permitted without the consent of her husband.¹

It may be noted here that Allama Shami has discussed this part (in volume 5). And, he did not only report the difference of opinion between the authors of Nahar and Bahar but he also employed its purport into his derivation. However, after a thorough look into the whole discussion what becomes evident is the same as has been mentioned above.

C. There always has been a difference of opinion among *ulema* on the issue of *Azl*. Nevertheless, Maulana Shabbir Ahmad Usmani stated, after taking stock of all the proofs and formulating a concrete opinion out of the contents, “It is evident, from the study of classical debate on the issue, that *Azl* is reprehensive (*Makruh*) in the absence of a genuine need”. As said:

فالذي يترجح من مجموع الأدلة كراهة العزل
وكونه غير مرضي من غير تحريم

The point substantiated by all this evidence is that *Azl* is odious and unappreciable, but it is not forbidden.²

However, in the presence of a valid excuse, the experts almost unanimously accept it to be permissible. The above references may be referred in this regard. Escaping intercourse during a distinct period of menstruation is permissible even without being considered odious, i.e. *Makruh*, because it does not oblige any restriction from the *Shariah*.

¹ Raddi Muhtar 2: 380.

² Fath al-Lahan 3: 514.

2. Permanent

The first and second kind of provisions is forbidden (vide detailed proof under No.5).

Although, in the question, it has been formulated only regarding tubectomy but it is implied that vasectomy is also inclusive in that. Hence, not only the tubectomy which causes permanent damage to the reproductive ability of man, but the hysterectomy, leading to removal of uterus of a woman rendering the conception impossible, is also forbidden.

Besides the above said operations, any use of such medicines, which permanently damage procreative ability of man or woman, would be prohibited. Since they are also included under the provision of “Change in the Creation” and “mutilation of male organ” and “castration” (*jubb* and *khass*). For instance, Ibn Hajar says:

وقد صرح الشافعية بأنه لا يكسرها بالكافور ونحوه
والحجة فيه أنهم اتفقوا على منع الجب والخصاء
فيلحق بذلك ما في معناه من التداوي بالطبع أصلاً
The Shafa'ites have explicated that; using camphor
and things like this should not harm the
reproductive ability of someone. The evidence for
this judgement lies in the agreement of the Jurists on
banning people from castration and amputation of
penis, and, thus, it includes total destruction of
procreative abilities using certain drugs.¹

And the great Islamic scholar and doyen of the *ulema* Shah Waliullah also states the same in these words:

¹ Hujatullah al-Baligh, Siddiqui Publishers, p 321.

And, amputation of genitals that are essential for the perpetuity of lineage and race, the use of medicines causing complete sterility and total abstinence from sexual act must be regarded as ‘Change in the Creation of Allah’.¹

Here, this point worth consideration that both groups of the reverend scholars came to the same conclusion as regards amputation of the organ and the use of medicines causing permanent procreative disability.

Responses to the Queries

1. Actually, birth control is not permissible in Islam without a genuine reason because it is a diversion from the creational wisdom of Allah and to spoil the powers and favours bestowed by Him is ingratitude towards His bounties. The doyen of Islam, Imam Ghazali has wonderfully wrote:

(الأول) الأصل وله وضع النكاح والمقصود إبقاء
النسل ... وإنما الشهوة خلقت باعثة مستحثة ...
وبيانه ان السيد إذا أسلم إلى عبده البذور وآلات
الحرث وهياً له أرضاً مهياً للحرثة وكان العبد
قادراً على الحرثة ووكّل به من يتقاضاه عليها فإن
تكاسل وعطل آلة الحرث وتركه البذر ضائعاً ...
بنوع من الحيلة كان مستحقاً للمقت والعتاب من
سيده.

The progeny is real and for it only the marriage institution was established with the objective to increase the race. In this, the sexual involvement is only a means, which enhances this process. This can

¹ *Ibid.*

be explained by one allegory in which there is a master who assigns to his servant to undertake agriculture after providing him with the necessary tools, seed and land. The servant is capable enough to carry out his mission and the season is also very conducive. Then, if the servant becomes negligent about his obligations damages the tools and spoils the seed, on whatever pretext, then his master will certainly become annoyed on him.¹

2. However, birth control is permissible in certain circumstances on the basis of valid excuses. The list of valid excuses may be a long one and extant with elaboration. For instance, health of woman, her inability to bear the burden of pregnancy, causing her life endangered or some damage to her vital organs or any other strongly expected pain or the fear of her life due to inability to bear the labour pain or the probability of stillbirth leading to her death or any serious harm or any harm inflicted by the conception to her suckling child specially when the father of a child is not in a position to make any other alternate arrangement for feeding the infant or when husband is compelled to make long duration tours for his job and unable to take care of his children which may lead to spoiling of them. Some jurists, for instance in the comment of Durri Mukhtar Allama Mahatavi (2: 76), hold the opinion that the real fear of disobedience of offspring, created due to improper upbringing of the children, is really caused by the long absence of father due to occupational journeys. All these and other similar situations may render temporary contraception permissible. In almost all books of Jurisprudence there is a reference to relaxations pertaining to birth control necessitated by some genuine needs. For instance, see comments on Durri Mukhtar by al-Tahwawi, (2: 76), Durri Mukhtar 2: 380 and 5: 276, Fatawa Alamgiri, Kitabul Karahiya, etc. In these books

¹ Al-Ehya ul-Uloom, Published in Egypt, 2: 22.

permission has been reported pertaining to *Azl*, (Withdrawal), *sadi fami raham* (Closure of the Opening of Womb) and *isqat* (Abortion), before the foetus becomes live, on the basis of certain valid excuses. And, obviously cessation is better than annihilation.

3. It should be noted here that the health is a major ground for leniency in this regard, as has been mentioned now and again in the foregoing discussion. However, the minor illness may not become excuse here, as has been said:

مشقة خفيفة كأدنى وجع في أصبح وأدنى صداع في
الرأس أو سوء مزاج خفيف فهذا إلا أثر له
That any light trouble has no basis for this
permission, like finger pain, headache or
indisposition.¹

4. It is absolutely forbidden to generate mass opinion against the enhancement of human population. In this regard irrefutable evidences may be found in the Holy Qur'an, Traditions of the Prophet (peace be upon him), statements of the Companions and judgements of the Jurists. The following statement of Shah Waliullah will certainly help in the further understanding of the objectives of the *Shariah* and in answering the pertaining question. He stated:

اعلم أن الله تعالى خلق الإنسان مدنيا بالطبع
وتعلقت إرادته ببقاء النوع بالتناسل ووجب أن يرغب
الشرع في التناسل أشد رغبة وينهى عن قطع النسل
وعن الأسباب المفضية إليه أشد نهى ... وسئل
رسول الله صلى الله عليه وسلم عن العزل فقال ما
عليكم أن لا تفعلوا الخ ... أقول يشير إلى كراهية
العزل من غير تحريم والسبب في ذلك أن المصالح

متعارضة فالمصلحة الخاصة بنفسه في ... أن
يعزل والمصلحة النوعية أن لا يعزل لتحقيق كثرة
الأولاد وقيام النسل والنظر إلى المصلحة النوعية
أرجح من النظر إلى المصلحة الشخصية في عامة
أحكام الله تعالى.

It should be noted that Allah has created man as a civilised being and to perpetuate this civilisation, he has related it with the preservation of human race. That is why the *Shariah* takes keen interest in the constancy of human race and any attempt that harms this or which takes man near to that is abhorred by it. When the Messenger of Allah (peace be upon him) was asked about the Withdrawal, then he remarked “There is no harm if you do not practice it”. I deduce from this the odiety of *AzI* and not the prohibition. The reason being the interests may be different and the individual interest is that one should practice it and the implicit interest is that it should not be practiced. The human progeny should multiply. Therefore, of the implicit interest should have edge over the individual one.¹

5. So long as the question of apprehension of difficulties on the basis of embryonic and natal disease of the prospective child is concerned, it is not necessary that the same would be absolutely harmful for the child and it cannot be decided with full confidence and that simile cannot be said as perfect. Moreover, the geographical, nutritional and cultural differences may lead to different positions in this regard. But in the dire need, when the child may remain as “patient” in the juristic terminology or there is a strong apprehension of it, then the contraception may be allowed.

¹ Hujjatullahil Balighah, 322.

6. In any case, the operation leading to permanent contraception is forbidden due to various reasons such as it involves 'Change in Creation', it is tantamount to castration, unnecessary opening of private parts of a Muslim woman before a stranger, etc. The application of the rule of Necessity is also not possible in case of vasectomy and tubectomy or hysterectomy. The Jurists have defined Necessity as:

واستدل ابن السريج على وجوبه بالإجماع على
تحريم النظر إلى العورة وقال لو لا الختان فرض
لما أبيع النظر إليها من المختون

Necessity may be defined as a situation, which brings destruction of someone or it brings the one near to that. According to Imam Razi, Necessity is the apprehension of injury, which is either to human life or to a human body part.¹

7. However, the latter jurists gave judgements in favour of termination of such a pregnancy. Allama Abdul Hai Farangimah, a renowned jurist of comparatively modern time, commented on the above referred statement of Hidayah in this way:

أما في زماننا يجوز وإن استبان الخلق وعليه
الفتوى

This conception deserves respect since it is not responsible for its existence. And, therefore, its termination is not permitted...however; this would stand permitted in our age, even if the complete formation of the foetus becomes obvious.²

¹ Ahkamul Qur'an li al-Jasas, 1:130.

² Hidayah Awdin, Rahimiya: Deoband, 2:292.

8. Without any genuine reason, just the willingness of spouses not to have more children can hardly provide a valid ground for the permission of clinical termination of pregnancy. Only in case of such excuses as enumerated in the foregoing passages, it may be permitted within the prescribed period.

9. If there is no other one to take care of or there is an apprehension that some disease may be transferred from the mother to her child, and consequently, the offspring would be suffering from “infirmity” in terms of Jurisprudence, then the termination of pregnancy would be allowed within the prescribed period of 120 days.

10. It is not permissible to become helpful in the demise of some one in any case. Because, so long as some one is provided with life, he or she would be considered an honoured person. And, to become means of destruction of an honoured one is not only prohibited but it invites punishment as well. Hence, the use of such medicines by a patient, which definitely cause death of some one, is forbidden from the *Shariah* point of view. Rather, in some cases a blood money would become obligatory on the offender.

Since treatment of illness is not an indispensable thing, hence, the Jurists do not consider its ignorance. However, if this is done with an intention to commit suicide then it will be a sin and recourse to it would not be permissible.

RESPONSE TO THE QUERIES ABOUT BIRTH CONTROL

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1. Permanent Birth Control

Such measures of birth control which prompt man to do away with procreative abilities, of which vasectomy of male and tubectomy of female are being popularly applied, really stand forbidden, i.e. *Haram*. In ancient times *ikhtisa* (castration) was used as an effective measure for this purpose by some of the Companions of the Prophet (peace be upon him), hence, he forbade them to do so. Reverend Saad bin Abi Waqqas narrates that had they were given the permission they would have opted for castration (instead of going for worldly pleasures).

"رد رسول الله صلى الله عليه وسلم على عثمان بن
مظعون التبتل ولو أذن له لاختصينا".

"The Messenger of God has disallowed a bachelor life to Uthman bin Mazon. Had he allowed him, we would have definitely gone for castrations."¹

The Jurists have considered "castration" as prohibited on the basis of this statement. Qazi Abul Hasan Mawardi writes:

"ويمنع من خصاء الأدميين والبهائم ويؤدب عليه".
"Castration of a man and animals would be prohibited and it would be punished."²

¹ Bukhari and Muslim from Sa`ad bin Waqqas.

² Al-Ahkam ul-Sultanya.

Hafiz Ibn Hajar has declared that not only *ikhtisa* but the use of medicines leading to that are also forbidden, *Haram*, and reports an agreement of Jurists against this practice which destroys procreative abilities of man.

"والحجة فيه أنهم اتفقوا على منع الجب والخصاء
فيلحق بذلك ما في معناه من التداوي بالقطع أصلاً".
"The proof of this is that there is an agreement on
the disapproval of amputation of penis and
castration therefore, it would also be related to the
medical process by which the capability of
procreation it self is done away with.¹

Among the jurists of Shafai school of thought Allama Bajiri also proclaimed that any attempt to diminish procreative power of some one is *Haram* and he distinguished between temporary and permanent nature of anti-fertility measures:

"يحرم استعمال ما يقطع الحبل من أصله أما ما
يبطئ الحمل مدة ولا يقطعه فلا يحرم بل إن كان
لعذر كتربية ولد لم يكره وإلا كره".
"The use of such a thing would be forbidden which
completely destroys the quality of conception.
However, if such a thing do not permanently takes
away the procreative ability of some one but
temporarily affects this, then it would not be
considered *Haram*, rather if it is done with an
intention of good education and proper upbringing
of children then it would not be even considered

¹ Fath ul-Bari 9:97.

odious (*Makruh*), otherwise this sort of techniques would be considered so.”¹

While keeping the opinion of the Qur’anic exegetes in view, it seems that it would be included in the category of “Change in Creation” which the Qur’an has repudiated and declared it some sort of a devilish endeavour.² The general view, which emerges from the understanding of the exegetes, is that such a change in anything which alters or jeopardises the very purpose of that thing or by using that thing contrary to its innate functions is technically termed as “Change in Creation”, i.e. *taghayyur fil khalq*. It is evident that vasectomy of man or removal of uterus of woman completely obliterates, rather diminishes the very purpose of sexual organs, the object to which the Qur’an refers as *faatu harthkum*, i.e. they are like tilth for you. Reverend expert Shah Waliullah Dehalvi further removes all confusions arising in the understanding of this phenomenon of *taghayyur fil khalq* as can be applied here in case of anti-fertility operations. He states:

"وكان أعظم أسباب النسل هو شهوة الفرج
فإنها كالمسلط عليهم منهم يقهرهم على ابتغاء النسل
أشأوا أو أبوا، وفي ذلك جريان الرسم باتيان الغلمان
ووطئ النساء في أدبارهن تغيير خلق الله حيث منع
المسلط على شئ من إفضائه إلى ما قصد له
وكذلك جريان الرسم بقطع أعضاء النسل واستعمال
الأدوية القامعة للباءة والتبتل وغيرها تغيير لخلق
الله وإهمال لطلب النسل".

“One of the major impulses of procreation and racial perpetuity is the erotic pleasure which has been, as is imposed upon man, compelling him to seek offspring whether he is willing or not. The unnatural sex with woman and sodomy are considered to be

¹ Hashyat ul-Khatib, 4;40.

² Surah Nisa: 119.

“Change in Creation of Allah”, that is preventing something from fulfilling its bestowed purpose. Removal or severing of reproductive organs, use of drugs generating artificial infertility, living in solitude and secluded life and so on would certainly be considered as “Change in the Creation of Allah”.¹

Suspension of human urges for procreation.

Consequently, there are several references, which make change in the procreative capabilities, as a criminal offense and the obligatory compensation for which would be equal to that of killing a person. The author of Hidayah, from among the experts of Hanafi school of thought, states that:

"ومن ضرب صلب غيره فانقطع ماءه تجب الدية لتفويت جنس المنفعة".

“If some body strikes on the back of someone with such a force that it leads to cessation of seminal discharge then, due to damage of a special benefit to a person, it would lead to obligatory compensation of *diyyat* (as if killing of a person).”²

Shaikh Aleesh Maliki expounds that:

"قال في المختصر: والدية في العقد أو السمع أو البصر أو النطق أو الصوت أو الذوق أو قوة الجماع أو نسله".

“Blood money *diyyat* would become obligatory by destroying some ones capabilities of thinking, sight,

¹ Hujjat ul-Lah Al-Baliga2:123.

² Al-Hidayah, kitab ul- Dayat.

hearing, speaking, sound, taste, procreation, and intercourse.”¹

Ibn Hajar Makki Shafai has also propounded that the blood money would become obligatory due to any damage of procreative powers of man or woman.² Sharfuddin Musa Hanbali also writes the same thing.³ And, Ibn Hazm has also expressed the same opinion.⁴

And, the way it is not permissible to alter the Creation of God by others, it is also not permitted for one’s own self, similar to the case that murder is forbidden, suicide is also forbidden and the emphasis in Fatawa Alamgiri is that self-killing is more serious a thing than killing others.⁵

However, if any person is suffering from any chronic or critical ailment and the medical experts strongly feel that his or her disease would be transferred to their children for example *jazam*, *junun*, etc. and there is an apprehension of conception in spite of the use of temporary contraceptives and anti-fertility measures, or it is medically dangerous to continue the use of such techniques, or people are not in a position to use them properly due to mental disturbance and that after the birth of a baby there is no close relative who could take responsibility of rearing the new born baby, in such a situation under the provision of "الضرورات تبيح المحظورات" (Necessities render the taboos permissible) this would be allowed. It is because, as would be discussed later on, the Jurists have permitted abortion in exceptional cases and prevention of a conception is better than abortion which destroys it.

2. Abortion after spirit is acquired

¹ Fath ul Alal Malik 2:290.

² Nahayat ul Muhtaj4:322.

³ Al-IQana’a 4:228.

⁴ Al-Mahalla.

⁵ Fatawa Alamgiri 4:115.

So as to reflect on the issue of abortion, we should deliberate on two stages of the foetal development. One situation may be that the foetus has become live. According to various *Ahadith* the spirit is blown into the foetus to render it a real human being after four months or 120 days from the time of conception. Perhaps, the modern gynecologists endorse this fact.

There is a consensus among the Jurists and *ulema* that abortion is forbidden, i.e. *Haram*, after the spirit is blown into the foetus.

Ahmad Aleesh Maliki states:

"والتسبب في إسقاطه بعد نفخ الروح فيه محرم
إجماعاً وهو من قتل النفس".

"The basis of abortion after acquiring of soul (by the foetus) is prohibited and this is tantamount to take away life of a person."¹

And, in the Fatawa of the great Islamic scholar Hafiz Ibn Taymiah it is mentioned:

"إسقاط الحمل حرام بإجماع المسلمين وهو من
الوآء الذي قال تعالى فيه: وإذا الموءءة سئلت بأىّ
ذنوب قتلت".

"There is an agreement among the Muslims that abortion is prohibited and that it is similar to bury some one alive as stated by the Almighty in these words, "And, when the infant girl will be asked, for what she was killed?"²

¹ Fath ul-Moalla Al- Malik 1:399.

² Vol. 4 P. 317.

However, it should be permitted in case that the foetus is alive inside mother's womb and her life could not be saved without undergoing the desired abortion. It is because, in this case, the harm to mother has precedence over the harm to an unborn baby. Furthermore, the mother's survival is evident whereas the survival of the would-be baby is conjectured. For instance, Islamic Jurists give permission for slaying such Muslims whom their foes use as a cover during war because in that case the defense of an Islamic state should have precedence over the lives of a few Muslims. Here, there might be confusion from those juristic derivations, which forbid killing of one person to save the life of other person. For example this statement of Ibn Najam that:

"لأن إحياء نفس بقتل نفس أخرى لم يرد في
الشرع."
"...because it has not been mentioned by the *Shariah*
to kill one soul to preserve another."¹

Or this narration from *Sharah Sain al-Kabir* that:

"إن المسلم لا يحل له أن يقي روحه بروح من هو
مثله في الحرمة."
It is not permissible for a Muslim to save his own
life by taking the life of some one that is prohibited
by the *Shariah*."

This injunction is applicable only when lives of both the persons are of equal status. The one who took birth and came in this world has been considered as living one for all practical purposes in the context of Islamic injunctions whereas the instance of foetus, *Janin*, is not accepted so in case of some injunctions. That is why, Imam Abu Hanifah expounds that negation of correct paternity of

¹ Al-Bahr ul-Raeq 8:205.

foetus does not cancel the paternity of that foetus and the author of Hidayah and others explain its reason that the foetus growing in the womb of a woman cannot be accepted with certainty.¹

Hence, in the issue under discussion, the abortion should be accepted as valid because the way the mother's existence is certain the existence of something in her womb is not that much certain. What Imam Shami writes, while discussing on some issue, also supports this derivation. He writes:

"إن الحامل إذا ماتت وولدها حي يتحرك شق بطنها من الأيسر ويخرج ولدها، ولو ماتت الولد في بطنها وهي حية وخيف على الأم قطع وأخرج بخلاف ما لو كان حياً، لأن موت الأم به موهوم فلا يجوز قتل آدمي حي لأمر موهوم".

"If a pregnant woman dies and her foetus shows life and makes movement inside her womb then her belly would be severed on the left side and the baby would be brought out. And, if the baby is dead and the mother is alive and there is a danger that she would succumb due to the presence of dead foetus in her womb then the foetus would be mutilated and brought out there from. But, if the baby is also alive then it would not be permissible to chop it for bringing out because it is uncertain that its conservation may lead to the death of mother. And, it is not permissible to bring life of a surviving person at stake just on the basis of doubtful matter."²

3. The Pre-Soul Abortion

¹ Hidayah Chapter Li'an.

² Radd ul-Muhtar 1:661.

It appears from the discussions of some of the Jurists that they take it permissible to abort a pre-soul foetus. Such derivations may be found in all the three, i.e. Hanafi, Shafai and Hanbali schools. However, from the Maliki and Shafai schools Imam Ghazali has decreed that it is totally permissible to abort a foetus before life is blown into it.¹

Nonetheless, the reality is that even in the view of Hanafi, Shafai and Hanbali schools such an abortion would be permissible only due to some valid reason; otherwise it would be a sin and a forbidden action. Allama Ibn Abidin Shami expounds:

"لا يخفى أنها تأثم إثم القتل لو استبان خلقه ومات
بفعلها".

"It is evident that if its (foetus) creation becomes apparent (i.e. it has acquired soul) and it leads to diminution due to some deliberate attempt, then it would be considered as a murder."²

Abortion is not valid even before the development of extremities and organs and after the conception:

"أنه يكره فإن الماء بعد ما وقع في الرحم مآله
الحياة فيكون له حكم الحياة كما في بيضة صيد
الحرم".

"Even before the appearance of organs, abortion would be considered odious (*Makruh*), since after conception, the foetus would be included as a living thing similar to the decree regarding the egg of a hunt inside Masjid al-*Haram* (i.e. the grand mosque of Makkah)."¹

¹ For details vide: Al-Fiqh ul-Islami 3:557-558.

² Radd ul-Muhtar 5:519.

The jurists of Maliki school of thought are very strict regarding to this issue. It is reported in *Sharah al-Kabir lil-Daldir*:

"لا يجوز إخراج المني المتكون في الرحم ولو قبل الأربعين يوماً وإذا نفخت فيه الروح حرم إجماعاً".
"It is not permissible that the drops which entered into a womb should be brought out even before forty days and once the spirit is blown (into the growing thing) then there is a Consensus (*Ijma*) that it would be forbidden, *Haram*, to do so."¹

Ahmad Aleesh Maliki makes out that:

"لا يجوز استعمال دواء لمنع الحمل وإذا أمسك الرحم المني فلا يجوز للزوجين ولأحدهما ولا للسيد التسبب في إسقاطه قبل الخلق على المشهور".
"It is not valid to use contraceptive drugs and when the womb is infested with conception, then for any of them (spouses) it would not be valid, according to a well known statement, to make use of the method of abortion even before the formation of organs."²

The towering scholar of Islam Izzuddin Abdus Salam Shafai has refuted the use of contraceptive drugs.³ Then apparently, the abortion would be even more refutable in his eyes. However, there is no doubt that there is a difference of opinion among the scholars of Shafai school of thought and some of them have declared that abortion before the acquisition of soul by the foetus is altogether *Haram*. Ibn Hajar Makki says:

¹ *Ibid*, 2:366.

² *Fath ul Ala Al-Malik* 1:399.

³ *Fath ul Ala Al-Malik* 1:399.

"أنهم اختلفوا في جواز التسبب في إلقاء النطفة بعد استقرارها في الرحم وإن أبا إسحاق المروزي يجوز إلقاء النطفة والعلقة، ونقل عن الغزالي أنه أورد في بحث العزل ما يدل على تحريمه، وقال: أنه الأوجه، لأنه بعد الاستقرار آتلة للخلق".

"There is a difference of opinion among the Jurists regarding attempts to remove the foetus (from a mother's body) once the conception becomes established. Imam Maruzi declares as valid the abortion or removal of zygote or clot. Imam Ghazali narrates that in the discussions regarding *Azl* he has mentioned the proof which authenticates its being a taboo and have considered it more appropriate a statement because the foetus has become ready for creation just after the conception."¹

Allama Sharfuddin Musa Hanbali was of the opinion that abortion is altogether a punishable offense.² Ibn Qudamah also writes the same thing.³ Ibn Hazm has made it obligatory to commensurate; i.e. to give *kaffara* including *gharrah*, for abortion after four months (i.e. the post-spirit phase) and before that only *gharrah*.⁴

Ibn Hazm quotes Ibrahim Nakhai as well, that if a woman affects an abortion by piercing something inside her womb or by using infanticidal drugs then *kaffarah* of murder along with *gharrah* would be obligatory.⁵

Thus, it is evident beyond doubt that abortion is forbidden even in the pre-soul stage of a foetus, although it would be permissible in

¹ Nahayat ul- Muhtaj 6:179.

² Al-Iqna`a 2:309.

³ Al-Mughni 7:815.

⁴ Al-Mohalla 11:30.

⁵ *Ibid* P. 29.

case of any admissible excuse. And, in Zahiriya and Alamgiri, wherein there is justification for abortion as such, the context is simply that of an admissible excuse. What are the exceptional cases, which enjoy relaxation in this regard, could be guessed from the detailed explanations obtained in the literature of Jurisprudence.

For example, Alamgiri comments:

"امرأة مرضعة ظئرها حبل وانقطع لبنها وتخاف
على ولدها الهلاك وليس لأب هذا الولد سعة حتى
استأجر لظئر يباح لها أن تعاجل في استنزال الدم
مادام نطفة أو مضغة أو علقة".

"If the pregnancy of a nursing woman becomes evident and lactation ceases and the apprehension of severe harm to the child becomes certain and the father of the child cannot afford paid suckling, use of any drug would be allowable up to the stage that the foetus is simply a mingled drop, clot or a fleshy entity."¹

Such exceptional circumstances may be categorised into two sorts. Firstly, those which are related to the foetus, e.g. basic deficiency, physical imbalance, dangerous genetic disease, etc. may provide valid excuses for abortion. It is because, if it is permitted with certain conditions before the "existence of creation" of the ground that it is not likely to affect lactation, having bearing on the suckling child, and in the present context the would-be baby may face more harm than in the preceding example. Therefore, abortion would be considered even more permissible due to certain deficiencies. The post-soul stage should be guessed on the basis of this situation because there is a marked difference between diminishing a sure existence and preventing a potential one.

¹ *Ibid* 4:112, Deoband.

The other category of excuses appertain to “mother”, for instance, threat to her life, apprehension of her mental disturbance, danger of her mental or physical enervation causing incapability to bring up a child and there is no possibility that her other relatives would take care of the baby, pregnancy resulting from rape, etc. are some of the cases where pre-soul abortion would be permissible since the Jurists have given permission of abortion due to even less serious excuses. However, if the abortion is wished by the spouses just to avoid it, or the delivery is not going to cause any problem except the general weakness, then in such a situation even the pre-soul abortion would also not be valid.

4. Contraceptive Drugs

The measures, which are applied for temporarily acquired infertility such as the contraceptive drugs affecting the sperms, which may not fertilise an ovum as a consequence, in spite of their being injected into a womb, would not be normally permissible in the absence of any reason. Hence, some of the statements of some renowned stalwarts of each school of thought are being mentioned so as to throw some light as regards the present issue. The doyen of scholars Sarakhsi Hanafi states:

"ثم الماء في الرحم ما لم يفسد فهو معد للحياة
فيجعل كالحى في إيجاب ذلك الضمان بإتلافه كما
يجعل الصيد في حق المحرم كالصيد في إيجاب
الجزاء عليه بكسره".

“The mingled fluid have a capability to yield life until it becomes stale, hence, in the matter of fixing a compensation for destroying it, the same would be conjectured as a living being similar to the case where destruction of an egg in the Holy Mosque of Kabah is considered to be as if a whole hunt of the kind, while fixing any compensation in that regard.”

Shaikh Aleesh Maliki writes:

"لا يجوز استعمال دواء لمنع الحمل وإذا أمسك الرحم المنى فلا يجوز للزوجين ولأحدهما ولا للسيد التسبب في إسقاطه قبل الخلق على المشهور."
"The use of contraceptive drug is not valid and when the conception is ascertained then it is not valid for the spouses or the master of a slave maid to apply any measure leading to abortion before the appearance of organs in the foetus."¹

It is stated by Ibn Arabi Maliki that:

"وأما استخراج ما حصل من الماء في الرحم فمذهب الجمهور منعه مطلقاً."
"The removal of foetus matter from the womb is as such forbidden according the well known jurists."²

5. The External Contraceptives

The use of condom by man or the use of any preventive device by woman with the intension of temporary infertility then it would be guessed on the basis of *Azl* in the classical age. There is difference of opinion among the Jurists regarding odiety or relaxation as regard *Azl* and its details may be found in several *Ahadith*. However, the majority of Companions of the Prophet (peace be upon him) and their followers had been taking *Azl* as *Makruh*, i.e. avoidable or odious.³

¹ Al-Mabsoot 26:87.

² Fath ul-Ali Al-Malik 1:399.

³ See Al-Mohalla 11:391-392, Musannaf Ibn Abi Shaiba. 4:22.

It is referred about the Hanafites that they consider it allowable without any reservation but Ibn Humam reports that some of the Hanafī scholars also consider it odious.

"في بعض أجوبة المشائخ الكراهة وفي بعضها
عدمها".

“Some of the statements of learned Jurists view it to be odious whereas other statements deem it non-odious.”

The renowned Hanafī expert of the Science of Hadith Mulla Ali Qari writes while explaining this part of the *Hadith* about *Azī* that “it is a minor genocide” in these words:

"ذلك الواد الخفي".

In reality the spirit and style of *Hadith* also supports the same.

"ذلك يدل على كراهة العزل بل يدل على
الكراهة".

“This (statement) is taken as a proof odiety of *Azī* (withdrawal).”¹

It is evident that the status of condom is equal to that of *Azī* (withdrawal).

Hence, the Jurists have put the precondition of the permission or agreement of wife for *Azī*. In the same way, they have put the condition of agreement of the husband if the wife applies some device to close the way to the womb.

¹ Mirqat ul-Mafatih 3:441.

"يجوز للمرأة أن تسد فم الرحم منها من وصول
ماء الرجل إليه لأجل منع الحمل، واشتراط صاحب
البحر لذلك إذن الزوج".

"It is permissible for a woman to obliterate her
vagina from the passage of semen with an intention
to prevent conception. The author of al-Bahar has
set the permission of wife as a pre-condition."¹

And, if we contemplate seriously in this regard then it would be clear that, the use of any medicine in the way to uterus, preventing movement of the sperms, would also come under this injunction, because *Azl*, condom or loop prevents seminal fluid from entering into the womb where it is supposed to fertilize the ovum and application of certain ointments would also kill the sperms in their way to the uterus.

Since *Azl* has been considered odious, *Makruh*, the use of contraceptives without any valid reason would also be guessed as similar. Some of the valid reasons for any relaxation in this regard may worth mention here.

There is a strong apprehension of death of mother, there is danger of mental or physical deficiency of the mother or that of her any severe ailment, mother is not capable enough to bring up the child, neither there is possibility that any of her relative would take care of the baby, there is a possibility that the baby would be caught by any severe disease, the objective to create gape between the birth of two children, these and similar excuses would make it valid to use temporarily affecting contraceptive. It is because; the Jurists have given permission for *Azl* even for less serious matters such as apprehension of disobedience or ill treatment of children. It has been mentioned in Fatawa Alamgiri:

¹ Radd ul-Muhtar 2:412.

"رجل عزل عن امرأته بغير إذنها يخاف من الولد
السوء في هذا الزمان فظاهر جواب الكتاب أن لا
يسعه وذكر ههنا يسعه لسوء الزمان".

"If a person practices *Azl* without the permission of his wife, while fearing ill-treatment from his offspring due to contemporary corruption, the holy book's, stand is in the affirmative in this regard is on the ground of "fear of ill-treatment due to contemporary corruption."¹

Its use for "smaller family" is not appropriate in the light of this statement, i.e. "تزوجوا الودود الولود" (*Marry more loving and more procreative women*) (*Hadith*). The limitation of birth due to social interest is also not correct, and this is against the spirit of Islam and contrary to the responsibilities of the fair sex. People have considered it permissible for the preservation of beauty but it is not suitable to give preference to beauty over the basic responsibilities of a woman. Hence, this excuse is not appreciable in the light of *Shariah*. But, if a woman is compelled to earn her livelihood due to her special circumstances then it may be permitted. In the same way the prevailing movement of population control with economic pretext is an echo of ancient ignorance beyond doubt. And, according to the Qur'anic command:

"لا تقتلوا أولادكم خشية إملاق" "Do not kill your children with the fear of loss of wealth", this would be forbidden, *Haram*, because this verse is not only reflecting the killing of one's own offspring but declares the concept of "fear of resources" as unfounded. As:

"هذا ذم لعلة الامتناع لا لأصل الترك".

¹ Alamgiri 4:112.

“This condemnation is on the basis of contentment and not due to actual renunciation.”¹

However, this may be considered that an individual may be allowed for this exemption due to certain understandable personal reasons specially when there is a difference of opinion among the Jurists regarding the avoidability of *AzI* and some of them see no harm in the destruction of foetal matter before it takes any real existence. For instance, Imam Qurtabi says that there is no injunction pertaining to semen before the conception.

"إن النطفة لا يتعلق بها حكم إذا ألقته المرأة قبل أن تستقر في الرحم."

“If a woman discharges semen from her internal organs before the conception could take place, then there is no juridical decision against her act.”²

6. The Natural Approach

This technique of controlling pregnancy, which does not require any special action or device but just by avoiding intercourse during the medically proved most probable days of conception, is permissible as such. However, any reluctance arises in any action due to two reasons. Either the very action is itself condemnable and contrary to the objectives of *Shariah* or its motive and intention is not valid which has been said in a *Hadith*, "إنما الأعمال بالنيات" “Intention is the basis of an Action” and the Jurists have propounded this axiom from this *Hadith* that "الأمور بمقاصدها".

In the situation under discussion if the intention is not contrary to the objectives of *Shariah*, then application of intercourse planning may be allowed without reservation and if the intention does not

¹ Ehye Uloomiddin 2:22.

² Al-Jame ul-Ahkam ul-Qur’an 12:8 with reference of Janeen.

collaborate with the spirit of *Shariah*, then the same would turn into an odious action, *Makruh*.

7. Cooperation in Birth Control

Cooperation in forbidden techniques and applicable situations is not permissible for the Muslim doctors because the Jurists have seriously considered the issue of cooperation in evil things or actions. In *Khulasah al-Fatawa* this has been mentioned that:

"ولو أجز نفسه من ذمي ليعصر له فيتخذ خمراً
يكره".

"If a person extract wine from grapes for a *Zimmi* (protected non-Muslims) on wages then it is considered odious."¹

And, in this regard, the distinction between a Muslim and non-Muslim patient does not seem proper because cooperation with non-Muslims in any evil is not valid in itself in spite of any permission in their religion about the same. The Jurists write:

"رجل له أب ذمي أو امرأة ذمية ليس له أن يقوده
إلى البيعة وله أن يقوده من البيعة إلى منزله، لأن
الذهاب إلى البيعة معصية وإلى المنزل لا".

"If any Muslim's father or wife is a (Christian) *Zimmi*, then it is not permissible for him to take any of them to church, however, he can take them home from there because the sin lies in going to the church and not in bringing some one home."²

¹ *Khulasah al-Fatawa* 4:346.

² *Ibid* P. 347.

Therefore, whereas the Jurists have denied *ikhtasa*, the castration, they have denied it for the entire mankind without discriminating between believers and non-believers.

In Alamgiri it has been said:

"اختصاء بني آدم حرام"

"Castration of the sons of Adam is forbidden".¹

¹ *Ibid*, Vol. 4 P. 338.

Family Planning and Birth Control Measures

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The experts on this issue would have brought out a number of articles, notes and papers for quite some time. The author has also attempted here to present his views on the subject.

It is submitted that there are only two types of measures, which are in vogue for family planning and birth control, i.e. Prevention of Pregnancy and Abortion. The techniques used for this purpose may also be categorised as permanent and temporary means.

The First Situation

All sorts of means and techniques applied to cause permanent affect on the procreative abilities of man and woman are forbidden and *Haram*.

The Reasons and Logics

1. The verses *محسنين* and *بأشروهن وابتغوا ما كتب الله لكم* and *مسافين غير* i.e. “associate with them seek what Allah haith ordained for you”¹ and “desiring virtue and not fornication”² respectively emphasise with regard to the purpose of marriage that it is for genuine urges and procreation, and not just to gain sexual pleasure. In case of anti-pregnancy methods this is just reversed, which is deemed to be a Change in the Creed.

¹ Qur'an 2:187.

² Qur'an 4:24.

2. From the interpretation of various statements narrated from the Prophet (peace be upon him) such *تزوجوا الولود فيني* as *مكاثر بكم الأمم* "Increase your progeny to enhance the growth of *Ummah*," it becomes clear that his injunctions are for the increase of one's progeny and enhancement of the *Ummah* whereas contraception is contrary to this which would be considered as *معرضه شارع*. that is contrary to the intension of the explicator of *Shariah*.

3. This is tantamount to "Change in Creation" and an imitation of the degraded Shaitan, which is *Haram*.

4. This would be considered in the light of injunctions of the *Shariah* as the castration of human beings, which is *Haram* according to some sound *Ahadith* and the *ummatic* consensus.

Hence, the use of all sorts of techniques, devices and medicines leading to permanent dysfunctioning of the reproductive processes through surgical operation or external or internal application of medicines or devices which either cease the production of semen or ova or enervate them to the extent that they become totally ineffective, would be deemed forbidden.

Exceptional Situations

It is obvious from the writings of esteemed Jurists that if a situation so arises then something that is *Haram* becomes permissible in certain well explained situations and, while taking a parallel conjecture, there might be several situations where people may be exempted from the hardship of the above discussed taboo, as has been expressed in a juristic axiom:

"الفقهاء يجوز للمحتاج الاستقراض بالربح".

“As the Jurists have permitted a destitute to take a loan on the basis of interest”.

It can be said that although the principle of *masaalih* may not be applicable as regards contraception but the principles of *ikrah* (Odiety) and *dharurat* (Necessity) may be required in this regard.

So if the temporary and permanent methods of birth control do not fulfill the basic requirements as enshrined in these principles then *dharurat milgi al-Makhturat* and *Ahwan al-Baliyatain* (Necessity makes something lawful which is otherwise prohibited and there should be preference to the lesser evil from between the two) would become valid and permission for the practice of these anti-pregnancy measures would be justified, including those having permanent and lasting effects.

Edict Regarding the Second Situation

The techniques of birth control having only short term effect on the procreative potential of man, for example, the use of certain drugs and pills, suppidileries, douch, condom, loop, *Azl* or Withdrawal, planning of intercourse time, etc. are considered here.

All these techniques and methods should also be forbidden as such, keeping in view the foregoing discussion. However, due to certain valid excuses and necessities relaxation may be more likely given in individual cases and in exceptional situations. Hence, apart from the permission on the criteria of *ikrah al malji* (possibility of escaping a burden) and *zarurat* (Necessity), *ikrah ghair malji* and Need (*hajat*) may also justify permission to temporary methods of birth control, and for this purpose, the axiomatic norms of “*al-zarar yazo*”, “*al-zarurat tabia al-makhturat*” and other similar norms may provide the valid logic in this regard including various explanations and notes of esteemed jurists.

Only this sort of birth control techniques are debatable on the basis of minor points because excuse and need are additional things, the ascertaining and fixation of which would raise difference of opinion, rather, the possible scope may be widened and which may be difficult to be summarised under any general rule or axiom. Even then, to the author, if the question of birth or multiplicity of offspring has been verified by a doctor or an authentic expert, on the basis of his personal experience or observation, to be painful or causing grave consequences, there is a strong feeling that the life of the mother would be in severe danger at the time of delivery due to her poor health or any deficiency in the womb, or there is an apprehension that her health would further deteriorate or the chances of normal delivery would seem impossible due to abnormal pain, bleeding or any other medical problem or the delivery would be possible only after the surgical operation giving the mother a very severe torture, or giving the family a heavy financial burden, or affecting the upbringing of the existing child or children due to lesser gape in the pregnancy, or there is a possibility that the would-be baby possesses a risky genetic disease or an inborn developmental deficiency which would lead the child to a very miserable life after birth and give a constant torture to his parents, in these and all other similar situations the permission for temporary measures of birth control should be given, since all these cases may be categorised under the heading of *dharurat* (Necessity) and *hajat* (Need) in which the negation of *mamnua leghairehi* changes to the status of *odiety (ikrah)*. However, under the axiom:

"ما أبيع للضرورة يتقدر بقدرها".

"Necessity stands permissible only till there is the cause."

Hence, the contraceptives may be permissible only up to the time the *hajat*, (Need) is found. The permission for birth control will be of similar sort as according to the extent of *zarurat* (Necessity).

Birth Control under Economic Pressures

“There can be no denial that the responsibility of sustaining entire world has been kept by Allah the Almighty in His Own Hands:

"وما من دابة في الأرض إلا على الله رزقها".

“There is no animal on earth whose provision is not with God”.

Further, in the vast treasures of Allah nothing is missing and which He bestows on His creatures in certain measures.

"إن من شيء إلا عندنا خزائنه وما ننزله إلا بقدر

معلوم".

“And, there is not a thing but its treasures are with us. But, We only send down thereof in due balance and ascertainable measures”.¹

But, it is also a reality in this mundane world that the responsibility of rearing children has been laid down on parents, they are made answerable for nurturing them from the suckling period up to their acquiring of adulthood while making arrangements not only for their food, clothes and protection but also for their medical treatment if they are ill.

And, then, Allah increases the provision of some of them according to His planning and straitens or keeps it normal for others:

"إن ربك يبسط الرزق لمن يشاء ويقدر".

“Indeed, your Lord increases the Provision as He wishes or gives it in measures.”

¹ Qur'an 15:19-21.

Consequently, often it has been observed that some people die of hunger when they could hardly manage to arrange food twice a day whereas some others commit suicide when their impoverishment becomes unbearable for them.

In this situation, the question arises that, on the basis of such determinant verses, is it possible, while ignoring the importance of open means of sustenance, to impose the condition on parents that, in spite of their economic problems and hardships, they are not permitted to limit their offspring by using suitable temporary or permanent birth control methods? Whether this suggestion in the present context may be said as genuine that the parents, while having many children, and facing so many problems and hardships in rearing the existing children, should be given the burden to raise more children in the family?

It may be seen that the parents, having large family with meager resources to feed it, may fail to gain satisfactory resources to maintain the family in spite of their ardent efforts. Their economic situation do not take a happy turn even consequent to their hard efforts and toil and they become mentally very weak or nervousness may take them in the grip and they appear to be physically chronic patients who may as a last attempt to commit suicide while considering themselves as unfortunate lot and leaving the family without support or are compelled to give up moral restraint in life and become inclined to corrupt practices for earning wealth and money, which in turn make a very bad impact on the thinking and behaviour of the children themselves. This situation is a reality and a fact of life and the solution of which cannot be ignored.

The author is of the view that if the parents of more number of children are faced to such a situation then they should be given permission for birth control at least by the use of temporary contraceptives, keeping their exceptional situation in view.

It is true that the Qur'an has refuted the killing of children due to actual or potential economic crises in these words:

"لا تقتلوا أولادكم" and "من إملاق" لا تقتلوا أولادكم
من خشية إملاق"

“Do not, kill your children due to property and do not kill your children with the fear of loss of wealth.”

This is the Qur'anic injunction and, in *Ahadith*, even *Azl* has been termed as a minor form of castration, however, the question still remains that, by wealth, the Qur'an also means a situation of sheer impoverishment as has been illustrated above here? And, whether these verses have been revealed in favour of the parents who are facing utter hardship of life? This is the question, which may be answered in affirmation only with difficulty.

Then, how this can be said as a sound decision to disallow the parents of this sort, even to use temporary methods of birth control, which are apparently put in a situation termed as *taklif mala yutaq*, i.e. burdening by more than one's capacity.

And not in tune with the spirit of

"يريد الله بكم اليسر ولا يريد بكم العسر"
“Allah wishes your comfort and does not wishes your difficulty.”

In the opinion of the author, the issue under discussion can also be understood from the injunctions of Islam regarding marriage. In Islam, it is an open fact that, solitary bachelor life and seclusion have no appreciation. There are a lot of Qur'anic verses, and *Ahadith* persuading men to enter into conjugal bond.

The Qur'an has stated, while discouraging solitary and secluded life adopted by some one due to fear of provision, as:

"إن يكونوا فقراء يغنيهم الله من فضله".
"They fear of impoverishment, Allah will make them rich by His grace."

That means, one should not avoid marriage with the consideration of impoverishment or lessening of wealth, Allah has absolute control over poverty and richness, if the unmarried found themselves in utter hardships then Allah may cause their life to take a good turn. The Qur'an also advises:

"ويستعفف الذين لا يجدون نكاحاً حتى يغنيهم الله من فضله".
"Those who do not find suitable sustenance for the time being should keep restrain until Allah makes them prosperous."

Along with the above stated guidance, that the Prophet (peace be upon him) has been narrated as saying:

"من لم يستطع فعليه بالصوم فإنه له وجاء".
"Those who do not find themselves capable enough to marry, should postpone it and keep fast to remain pious."

The import of these injunctions should only be that just the poverty and want of provision cannot be regarded as sufficient criterion to avoid marriage, but if a person does not possess resources to make the marriage succeed then it is better that he should wait for the good turn of the situation. Then, in the light of divine assurance for future prosperity, although the poor and destitute parents should not be allowed to adopt birth control measures as such but, while keeping their incapability to have further children, they should be

permitted to take recourse to contraceptives having temporary impact on procreative potential of a couple.

Imam Ghazali was not an “anti-tradition researcher,” “victim of a blasphemous ideology” or a “liberal thinker” in terms of modern jargons, but he was having a deep understanding of the Qur’anic verses and Islamic traditions. He was a scholar having consideration for even minute things and he could vision deeper meaning of things. He was enlightened from the perennial light of the Prophethood and was a pious and God-fearing stalwart of Islam. This is conceded that it is not possible to agree with all of his postulations and the basis of his permission for *AzI* as a means of temporary anti-pregnancy measure, but if his opinion is endorsed as *saib* in regard to contraceptives then we would not be satisfied with an innovative statement.¹

However, this exceptional excuse for permission would not be conceded for those who take the multiplicity of offspring as an obstacle in their conjugal pleasures, but this decree is meant only for those special and exceptional cases where the multiplicity of children is really found problematic along with poverty and economic hardship.

Birth Control and the Case of Abortion

Since, the issue of abortion involves complexities and sensitivities in itself, it may cause a severe effect on the pregnant woman, hence, the principle "المنع أهون من القلع" "It is easier to prevent conception than to destroy it" requires practice of temporary methods of birth control if the certain situations are felt imminent. In spite of all precautions if, somehow, the conception takes place then the permission for abortion may be given up to the pre-spirit stage of foetus on the basis of Necessity and Need, the period of

¹ Ahya-uloom al-Din P. 47.

which has been ascertained by the Jurists to be of 120 days from the day of conception. Various explanations and finer details have been stated from the Jurists in this regard and may be referred to verify the Necessity and Need, i.e. *zarurat* and *hajat*, so as to consider abortion in the later stages of the foetus aswell. For instance see the following:

"يباح لها أن تعالج في استنزال الدم ما دام نطفة أو
"العلاج لإسقاط الولد إذا مضغة أو علقه"
استبان خلقه لايجوز وإن كان غير مستحبين
الخلق يجوز أما في زماننا يجوز على كل حال
¹ وعليه الفتوى".

"The use of drugs for termination of pregnancy is permissible for a woman provided the foetus is still either a fertilised ovum or blastocyst or an entity of flesh."

And:

Once the foetus acquires full development then medication intended to abortion is not permissible. However, if it could attain that stage, then it would be treated as permissible. So long as our time is concerned, then it must be taken so and there is *fatwa* record in this regard."¹

However, although there is a risk of life of a pregnant woman herself during the process of abortion in the post-spirit stage of the pregnancy, still, the permission for it cannot be given. In the books of Jurisprudence there is a clear juristic instance and there is almost consensus of the *ulema* and the principles like "A harm cannot be removed by another harm" and, therefore, here is case for taking

¹ Fatawa Hindya 4:112.

the life of one to save that of some one else. And, hence, it is preference without any sound basis.

Some Instances which make Abortion Permissible

Whereas this has been explained and made explicit in principle that abortion is permitted only in case of dire needs and that too before the spirit is blown in the foetus and this is well accepted that in the juristic terminology of *zarurat* and *hajat* also include physical torture and loss of life of the mother apart from the danger of life and loss of organs by the foetus which are allowed by the *Shariah* to be removed, then, in the opinion of the author, all the following situations would make the abortion permissible.

1. The delivery is going to jeopardise the life of mother or her physical and mental health is likely to be severely affected.
2. There is an apprehension that the baby would have some basic developmental deformity or imbalances both of anatomical and psychological nature, and the respective doctors have strongly confirmed it in the light of undergone tests and investigations.
3. The baby is sure to have a severe genetic disease.
4. The pregnant woman is not in a position, mentally and physically, to nurture her child and no alternative arrangement seems in the offing for the child's due care and, for which, just not a likely situation but a potential situation do exist with convincing proof.
5. The parents do not have capability to afford at their own to make necessary arrangements for the nursing and rearing of their children at a time and the upbringing of the existing child would be badly affected due to continuation of pregnancy.

6. Any virgin girl, which is not, an addict to fornication becomes pregnant as a result of certain unavoidable circumstances or due to rape and, hence, would be permitted to go for abortion if she so likes. Maulana Abdul Hai Lakhnawi also writes the same thing and the innate weakness of the fair sex also demands concession, specially, in the present time when, it can be guessed, how many difficulties and problems are faced by women. This permission would only be an example of "من سترها ستر الله له". "If some one conceals their evils his evils would be concealed by Allah", which is appreciated and required by the Islamic *Shariah*. In all those situations where the child or the parents are likely to be put in a physical or mental victimisation and constant mental and economical torture, the permission for abortion should be given.

The Islamic Shariah and Birth Control

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There are indeed three kinds of birth control that exist today, i.e. Termination of Reproduction, Prevention of Pregnancy and Abortion. However modern be the techniques of birth control, they would definitely fall in any of these three categories. Therefore, it seems pertinent to make an elaborate note on these categories and to deal with the pertaining injunctions of the *Shariah* in detail so that the issue of birth control may be understood well.

1. Termination of Reproduction

Termination of reproduction means the termination or discontinuity of human race by the way of removal, severing or surgically acquired dysfunctioning of reproductive organs of man or woman to the extent that either of them lose the innate procreative capability. For example, in ancient times, castration of man was applied to make them reproductively disqualified similar to the way animals are sterilised even today. And, the progress of medical science in the present modern era has brought several new techniques into practice such as vasectomy, hysterectomy, etc. which completely deprive man and woman of the capability to produce children.

2. Prevention of Pregnancy

The second category of birth control methods may be termed as prevention of pregnancy. In this technique, although both man and woman do possess their procreative abilities, however, their reproductive tracts are so affected that either of them temporarily

become disabled to compliment in the process of reproduction, resulting into uncondutive situation for any conception. The means available for this purpose are many and well known, like *coitus interruptus*, condom, loop, etc.

3. Abortion

The method of abortion comprises the third category of birth control, which obviously means pre-mature termination of the existing pregnancy by physical, chemical or surgical effects.

There are these three categories of various birth control techniques, which are found effective and feasible for this purpose. Any new technique would also be included in any of them. The Islamic injunctions for each of these categories would be understandably separate. Hence, it is appropriate to deal with each of them separately.

Injunctions regarding the First Category

The termination of reproduction by which the process of procreation and continuity of race is permanently damaged in man or woman, is explicitly prohibited and there is a consensus about this prohibition. And, the Companions of the Prophet (peace be upon him) variously posed this question to him on different occasions and his response was unmistakably in negative. There are various logics for its being a taboo, for instance Change in Creation, *Muslah*, intervention in the matters of faith, *Shirk* in the orders of God, etc. The *Hadith* has categorically refuted this approach of birth control and its prohibition is also proved as a principle.

Since there is no doubt regarding the prohibition of permanent termination of reproduction, therefore, there is no need to further discuss on this aspect.

Exemption in Some Cases

Some ailments and certain situations are so compelling that after confirmation by a genuine expert this becomes ascertained and evident that in the absence of termination of reproductive capability the conceived foetus could not be delivered or it may lead to the death of a pregnant woman. For instance, some women do not have natural ability to bear the burden of pregnancy and delivery, as their reproductive organs are somehow deficient. Consequently, the unnatural delivery by caesarean operation remains the only option, and according to doctors such types of operations could be conducted only twice or at the most thrice and after that there is no way out for any further delivery.

In other words, the respective woman has lost her natural ability of delivery and the same could not be regained by any means. In such a situation her conception would be fatal for her own life. If it is medically ascertained that she could not have a normal delivery any more without bringing her life to jeopardy, then she may be permitted to get herself operated in such a way that her procreative capability could be destroyed permanently. Since, all sorts of forbidden things become permissible due to compelling situations and, here, *zarurat* (Necessity) and *iztirar* (Exigency) is on the peak. Although, there may be a possibility to temporarily retain the reproductive process instead of causing total disability of the sort and if the woman happens to conceive somehow then she might be saved by abortion. But, if the excuse has acquired a permanent nature then its solution should also be absolute and lasting.

Moreover, if conception takes place in spite of temporary measures then it would result into several difficulties and problems for the woman and, although, she might be saved by abortion but she would become very weak and enervated in the process. The author has not seen any affirmative statement in this regard, however, some jurists have permitted abortion even after the post-soul stage

of a foetus, in the circumstance where the life of a woman is at stake.¹

The sin of termination of reproduction is less serious in comparison to that of killing of a living person and if the abortion of that is permitted then, in these circumstances, there is more scope of relaxation in the prohibition. The experts and knowledgeable may kindly consider it.

Injunctions regarding Prevention of Pregnancy

The meaning of prevention of pregnancy includes the outcome of all those techniques, which prevent conception in the womb of a woman in spite of presence of reproductive abilities.

There are several methods and there will be even more to attain in due course. In the time of the Prophet of God himself (peace be upon him) there were some techniques known to his Companions, which could defer conception for the time being, and the Companions had sought his opinion in that regard. Hence, all the modern techniques similar to the classical ones would be treated on similar basis as was found in that era. From this angle, the issue of temporary cessation of pregnancy is very easy to tackle with and without any complexity.

Injunctions regarding Withdrawal

The method of prevention of conception as was known during the Prophet's time is technically termed in the Jurisprudence as Withdrawal (*Azl*) or *coitus interruptus*.

The reality of *Azl* is well known and some Companions even used to practice it. When the Prophet (peace be upon him) came to know

¹ Tahdid Nasl P. 96, Al-Halal w al-Haram, P 168.

about this or he was informed by some of his Companions in this regard then he did not forbade it. And, all the *Ahadith* narrated from him on this theme do not negate it, rather two points emerge out of their deep study:

- a. This action is in itself permissible and adaptable since in none of his statements it has been explicitly forbade and the practice of his Companions in this regard has also been reported.
- b. Even though it has been allowed, however, it is not without his reservation and abomination because the expression of the Prophet (peace be upon him) in his pertaining statements is not encouraging and in some of his statements it has been even termed as “minor form of castration” and, thus, indirectly compared with a forbidden action. Hence, although it has been allowed in Jurisprudence but with displeasure. In some *Ahadith*, the Prophet (peace be upon him) has commanded to take permission of wife before practicing *Azl* during an intercourse. This and such *Ahadith* have been reported in Mishk’at,¹ Baihaqi, Ahmad, etc.

The School of Luminaries

Although the report of reprehension of some Companions towards *Azl* is present but the well-known Companions of the Prophet (peace be upon him) and later jurists have this expressed view that Withdrawal (*Azl*) is permissible. The majority of them consider it to be permissible. The investigators have supported this view and the four doyens of Islamic Jurisprudence, i.e. Imam Malik, Imam Abu Hanifa, Imam Shafai and Imam Hunbal follow this viewpoint. In the Hanafī school there is an affirmative opinion in this regard.

¹ Mishk’at P. 276.

العزل ليس بمكروه — ويعزل عن الحرية بإذنها.
"Azl is not odious.... and it would be practiced with
the permission of a free woman."¹

Hence, the references may be seen here:

1- قال الباجي هذا مما اختلف فيه الصحابة فذهب
الجمهور إلى إباحتها وذهب ابن عمر وغيره إلى
كراهته - والذي عليه الجمهور الفقهاء أن العزل
جائز على شروط سنذكرها.

2 - قال ابن الهمام العزل جائز عند عامة العلماء
وكرهه قوم من الصحابة وغيرهم والصحيح
الجواز.

3 - جلس إلى عمر على والزبير وسعد في نفر من
أصحاب رسول الله صلى الله عليه وسلم فتذكروا
العزل فقالوا لا بأس به".

4 - واتفقت المذاهب الثلاثة على أن الحرية لا يعزل عنها
إلا بإذنها — وعند الشافعية خلاف مشهور — قال
الغزالي وغيره يجوز وهو الصحيح عند المتأخرين.

- 1- Baji writes: This is from those issues in which there was a difference of opinion among the Companions of the Prophet (peace be upon him). Hence, the majority takes it as permissible and the opinion of reverend Ibn Umar is that it is odious. The

¹ Alamgiri 1:335, Durri Mukhtar Shami

majority of classical Jurists consider it that *Azl* is permissible with certain conditions.¹

- 2- Ibn Humam states: The general religious scholars are of the views that *Azl* is permissible whereas a section of Companions and non-Companions has proclaimed it to be odious. However, the right approach is that it is permissible.²
- 3- There was a group of Companions with reverend Umar including reverend Ali, reverend Zubair and reverend Saad also. There was a discussion among these Companions of the Prophet (peace be upon him) on the issue of *Azl* and all of them agreed that there was no harm in it.³
- 4- The three schools of thought have an agreement on this that *Azl* would not be practiced without the permission of a free woman. For the Shafites there is a famous divergence from this view, Imam Ghazali has narrated that *Azl* is permissible and the later ones are also inclined to hold this opinion.⁴

The natural conclusion from these statements would be that the majority of the Companions and the four towering jurists hold this view that Withdrawal, i.e. *Azl*, is permissible as such. And from some of the proofs its refusal is obvious but they would be considered opposed to the former opinion and would be treated as odious only. The experts have explicated on this as:

"والظاهر أن النهي محمول على التنزيه، أقول
يشير إلى كراهية العزل من غير تحريم."

¹ Aujaz ul-Masalik 4:569, Durri-Mukhtar Shami 2:412.

² Hashiya Mishk`at 2;275.

³ Mirqat Shar Mishk`at 3:442.

⁴ Aujaz ul-Masalik 4:571.

“I say that it is evident from this opinion that *Azl* is an odious act,¹ however, this is not of the grade which is almost prohibited.”²

The Judgement about the Prevalent Techniques

When the injunction regarding *Azl* has become obvious in the wake of above-mentioned details and its affirmation has become evident then the juristic point of view regarding other techniques in vogue, which suspends pregnancy, is also apparent now. That, if they are similar to *Azl*, then they could be considered permissible the way the *Azl* has been, rather they would be preferred even more than that. It is because, in *Azl* the semen is dropped or ejected out of the womb whereas in the contemporary and modern techniques this is not so but semen is prevented to meet the ovum. Hence, it would be regarded more appropriate that they are allowed as such since both the classical and modern techniques of temporary contraception are akin to Islamic injunctions.

Injunction about *Mubah*

The injunction regarding the allowed (*mubah*) has been stated by *usulain* that it is bound by the purpose and objectives and that really is *mohmal* (dubious) of "الأمر بمقاصدها" "Affairs depends upon their objectives".

Allama Ibn Hazm al-Ashbah pointed out that:

"وأما المباحات فتختلف صفتها باعتبار ما قصدت
لأجله".

¹ Hujjatullah 2:134.

² Mirqat Sharh Mishk`at 3:441.

“So long as the permissible things are concerned they would be judged on the basis of their purpose.”¹

Allama Shatibi expounded that:

"وكذلك قد يكون المباح وسيلة إلى ممنوع فيتترك
من حيث هو وسيلة"

“Similarly, the permissible becomes the means of non-permissible things. In such a situation it would be renounced on the basis of it being means of a disallowed thing.”²

The elaboration of *usulain* is that what is allowed (*mubah*) is in itself permitted. In this there is no aspect of reward or punishment, no obedience or obstinacy or establishment of good or removal of evil enshrined in the concept of Lawful (*Halal*). However, all the allowable things are based on objectives and purposes for which they are permitted. And, if the allowable action leads to some evil, then it would be removed and if it develops obedience then it would be preferable. And, if the allowable action is done with the wrong intention then it would become forbidden. And, if it is done with good intention then it would not only be allowed but it would be deemed better. And, if it is done with an intention, which is neither evil nor good, then there would be neither virtue in it nor any sin.

Objectives of Prevention of Pregnancy

After understanding the above concept if any contraceptive is considered, then it should be pondered what is the objective of the user behind this technique? And, with what motive one is going to

¹ Al-Ashbah, Shami, the book of marriage 2:284.

² Al-Muwafiqat 1:176.

adopt that contraceptive? And, an injunction would be derived from it only on the basis of a particular motive and since the objectives and intention in each case may vary, hence, the Islamic obligations in each case would be different.

If a person makes use of contraceptives with a valid intention then it would be regarded as permitted and if the same are used with a wrong motive then it would become non-permitted and invalid.

The Conditions for Prevention of Conception

There are following conditions for whatever be the method of temporary prevention of conception:

1. This method of birth control is related to individual and exceptional cases only. It should not be given a collective status and legal position and nor it should be propagated and publicised. Otherwise, if the birth control is publicly acclaimed and its qualities and benefits are stated openly and it is made a prime objective in a society or it is given a legal status then there should be no doubt about its negation and prohibition. The permission is conditionally valid only so long as it remains an individual and exceptional action.
2. The birth control should not depict any aversion to children as such, that this should not be the intention to have no children. In that situation it would become invalid because the Prophet (peace be upon him) has commanded the Muslims to increase the population and to strengthen their race.
3. The objective of contraception should not be against the objectives of Islam.
4. There should not be any fear that by using this method of birth control a permanent frustration would emerge.

The non-approval of collective policy of birth control and the negation of anti-fertility measures, just because of aversion to children is due to the reason that they are opposed to the objectives uphold by the Islamic teachings. The objective of *Shariah* and the commands of Prophet (peace be upon him) encourage marriage and the marriage with such a woman who possesses comparatively more procreative potential. And, he explicitly ordered the Muslims to have more children and to increase their race. For example:

"ناكحوا، تناسلوا، تكثروا فإنني مكاثر بكم الأمم —
تزوجوا الودود الولود الخ".

"Marry, sustain race and increase your progeny to outnumber other communities.¹ Marry most loving and most fertile women"².

"المصلحة النوعية أن لا يعزل ليتحقق كثرة الأولاد
قيام النسل" الخ.

"The secondary justification is that the husband should not practice Withdrawal, so that the objective of multiplicity of progeny and perpetuity of lineage may be fulfilled."¹

Situations that Validate Contraception

Now, here is a detailed discussion regarding the situations which validate the use of contraceptives and which are the acceptable motives for their use.

1. Weakness and Disease

If the woman is so weak, devoid of energies and strength that she could hardly bear the burden of pregnancy and lacks strength to

¹ Fath ul-Qadeer 2:242.

² Mishk`at P. 267.

bear the labour pain and the difficulties arising in delivery or there is a fear of post-delivery enervation or unbearable complications leading to total collapse of her health, in such a situation, all sorts of valid and suitable contraceptives are allowed to be made use of. It is because hardships and difficulties are considered to be *madfua* in Jurisprudence. The Qur'an explains:

"ما جعل عليكم في الدين من حرج".
"There is nothing bothering in Religion."¹

On the basis of similar excuses Imam Ghazali has given permission for appropriate measures like *AzI*.² Mufti Mohammad Shafi has also pointed out regarding its permissibility.³

2. Living a free life

Several people think why the burden of children should be undertaken in such a early age, at least some of the years must be spent free of such a botheration? Hence, they adopt contraceptive measure under the influence of this view. Apparently this motive is not against the *Shariah* because the rules seem to allow the same. But, since it is a situation showing aversion to children and hence could not be devoid of reprehension.

3. Cosmetic Motive

Psychology of some people is so, that, they are swayed by beauty of women. And, the attractive faces and figures are some times very essential for them to make their life delightful and keep their family happy. The mutual love and concern is the only thing, which sustains a sound family system, and the beauty and good-looking appearance of wife plays a very important role in making her

¹ Qur'an.

² Ehya ul-Uloom 2:22.

³ Zabt-e-Tauleed P. 37.

husband strongly bonded to her. Great scholar Shah Waliullah noted that:

"فإن الطبيعة البشرية راغبة في الجمال وكثير من الناس تغلب عليهم الطبيعة — تواد الزوجين به تتم المصلحة المنزلية".

"Human beings have natural inclination towards beauty and aesthetics and their behaviour is mostly governed by their such inclinations and the mutual love of spouses fulfils the objective of family".¹

The conclusion of this statement emphasises that mutual love and affection of spouses is desired and if some one's love to her wife depends solely on her attractive face and charming figure then the *Shariah* founds it a valid and natural thing. Some *Ahadith* also approve of it. In one *Hadith* the quality of better spouses pertaining to this issue has been marked in these words:

"إن نظر إليها سرته".

"If the husband glances her (his wife), she makes him pleased."²

So, if some husband is more inclined to aesthetics, then the *Shariah* has taken a tenable view valuing this sort of human psychology. Hence, if the contraceptives are used with this motive in mind that the beauty and attraction of a woman should be lasting for her husband then such a practice of contraception is valid. Imam Ghazali says:

"If a person adopts *Azl*, i.e. Withdrawal, with the intention that the beauty and attractive features of his wife may last longer so that he would be able to

¹ Hujjat ul Lah il-Baligha 2:123.

² Mishk'at 2:268.

enjoy her company with a lasting delight then it is valid and permitted.”¹

4. Children’s Health

Sometimes it happens that there is already one child and the suckling period of the child is yet not over. Meanwhile, the mother happened to conceive. The weakness of the first delivery could not be fully recovered by that time and that the new phase of weakness has began. She could not be relieved from the botheration of earlier child and now she is leading towards some more untoward a burden. On the other hand, children, who take birth due to such an early pregnancy, are normally physically weak, being deprived of maternal milk and her full attention. As a consequence of fresh pregnancy, her lactation gradually ceases and the first child is deprived of his or her due food and whatever milk is fed to the child in this weaning phase of suckling is also medically found harmful for the existing child. Hence, such a pregnancy affects lives of all the three persons involved, the mother, the earlier child and the later child. Therefore, to avoid this imminent peril the use of contraceptives is considered valid. In some *Ahadith* people are forbade to intercourse with their wives during the period when they have a suckling child since it causes bad effect on the latter’s health.²

In Fatawa, it has been explicated that if the pregnancy is harmful for the woman or her existing child then abortion is permitted.

"لأن المنع أخف من الدفع"

“So, if the abortion is valid then the use of contraceptives should stand even more advisable.”

5. Ill-Treatment of Woman

¹ Ehye Uloomiddin 2:23, Tahdeed Nasl P. 135.

² See details “*Al-Halal w al-Haram fil Islam*” P. 165, Tahdeed Nasl P. 126.

Some of the Jurists have expounded that if the wife of any man is rude, obstinate and ill-cultured and there is an apprehension that, her this shortcoming, would further increase after giving birth to his child, then in such a situation he is permitted to practice contraception (here *AzI*).¹

Apparently, the reason for avoiding pregnancy in this context is the fear of ill-treatment of a wife, and there is no matter desired, which is against the spirit of *Shariah*, hence according to the rules, there should be permission in this regard. Nevertheless, the appreciable approach would be the one in which a husband bears such things and avoids the use of contraceptives.

6. Impoverishment

Some people opt contraceptives due to the fear of impoverishment and destitution real or imagined and consider the action as valid. However, the use of contraceptives with this motive is against the *Shariah* and contrary to the proper belief on fate. Getting released from the burden of children due to fear of destitution or impoverishment, may be through killing one's own children, has been long back condemned by the Qur'an. It says:

"ولا تقتلوا أولادكم من إملاق".
"Do not kill your children due to (loss of) property."²

Although here "killing" has been forbade but the reason for this killing is also plainly assailed. It has also been pointed out:

"نحن نزرقكم وإياهم".

¹ Tahawi 2:76.

² An'am.

“We provide provision to you and to them.”²

These verses make it evident that it is not valid to show aversion to children with the fear of destitution and deprivation.

7. Disobedience of Children

The Jurists have propounded that the dominant crisis (*fasad*) of an era also makes the practice of *Azl* (and similar methods) valid as mentioned in some known juristic sources like Fatah al-Qadir, Bahar al-Raiq, Durri Mukhtar, Shami, Jahtawi, etc.-:

"وفي الفتاوى إن خاف من الولد سوء في الحرة
يسعه العزل بغير رضاها لفساد الزمان فليعتبر مثله
من الأعذار مسقطاً لإذنها".

“That is, due to the deterioration of social environment and the contemporary predicament and chaos, if there is fear that the children would be spoiled and ruined, then in such a situation *Azl* is valid and even there is no obligation of wife's consent.”¹

Abortion

The abortion, whenever it is carried out, would take place in either of the two phases. It may be in the latter phase when the foetus becomes live having spirit blown into it or in the earlier phase when the spirit is yet to be blown into it. According to the juristic

¹ Shami 2:412.

derivations the foetus happens to possess soul only after 120 days of the conception.¹

There would be two situations, while keeping the woman opting for abortion in view, either she would be inclined for the act without any valid reason or she would have proper and acceptable excuse for the same. Then, the excuse may be of the level of difficulty and hardship or it would have gone to the extent of Necessity (*zarurat*) or Exigency (*iztirar*). The injunctions would be different in each case.

1. The Source of Abortion

Apparently, abortion was not prevalent during the classical age of Islam but the Jurists have referred it and passed judgement while guessing it on the basis of *Azl*.

Although the goal of *Azl* and abortion is identical but the reasons for them are different. In *Azl* the aversion from children is potential whereas it is real in case of abortion.

"وينتزع من حكم العزل حكم معالجة المرأة إسقاط
النطفة قبل نفخ الروح — ويمكن أن يفرق بانه
أشد، لأن العزل لم يقع فيه تعاطى السبب ومعالجة
السقط بعد تعاطى السبب".

“Similar to the instruction regarding Withdrawal is that of the interception of effects of semen by a woman before the foetus could be bestowed with soul. It may be that both the cases are dealt separately because in care of the latter there is more difficulty whereas in care of the former means could

¹ Alamgiri 1:335, Fath ul-Qadir 2:49.

not be provided for a conception and the abortion is a matter which involves such means".¹

Anyway, abortion is more severe as compared to *AzI*; hence, its injunctions are also very stern. Allama Shami reports:

“When the semen has entered into a womb then, after all, it will give rise to one life and its annihilation is tantamount to the annihilation of life itself.”²

2. Abortion without Valid Reason

Abortion without having a valid and acceptable excuse in not permitted may be the foetus has life or not.

"ويكره أن تسعى لإسقاط حملها وجاز بعذر".
“It is obnoxious to attempt abortion but it may become permissible due to valid reasons”.³

3. Abortion on Valid Excuse

If there is a fatal and chronic disease which makes life of a woman miserable and the frequent deliveries would further deteriorate her health, then in such a case, abortion would be valid only up to the stage when the soul is not acquired by the foetus, that is within 120 days from the day of conception. Otherwise, it would be invalid.⁴

"وكذلك المرأة يسعها أن تعالج لإسقاط الحبل ما لم يستبين شيء من خلقه".

¹ Fath ul-Qadir.

² Shami 2:522.

³ Durri-Mukhtar, Shami, Imdad ul-Fatawa 4:205.

⁴ Imdad ul-Fatawa 4:205.

“And, a woman may proceed for treatment in this way up to the time when no signs of live baby appears to her”.¹

4. Abortion due to Some Emergency

At the time of Necessity and Exigency, when it is strongly felt that the further development of foetus may lead to death of the pregnant woman, in such a condition, if the foetus does not have acquired life (i.e. soul) the abortion would be valid, and if the spirit is blown in the foetus and there is fear of her death due to pregnancy or the complications of delivery, then abortion is permitted at a latter stage as well in the light of the axiom "أخف الضررين" (Let preference be to the lesser evil).

"من ابتلى ببليتين فليختر أهونهما".

“In case of becoming victim of two problems and if there are two imminent harms then in such a situation the lesser problem and smaller harm should be opted.”²

Here, the abortion and consequent loss of life in the uterus is a lesser thing in comparison to the life of mother hence it is permitted.³

¹ Alamgiri 1:335.

² Al-Ashabah.

³ Al-Hala Wal-Haram Fil Islam P. 168, Tahdeed Nasl P. 96.

The Juristic Imperatives of Birth Control

Ml. Mohammad Juned Alam Qasmi
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The theme under discussion is not new and unfamiliar in the religious circles. It goes back even to the classical age and the Companions of the Messenger of Allah (peace be upon him) had also dealt with some of the aspects of this theme in that era. And, an appropriate response was made to such issues on the opportune time. However, the Malthusian theory of population growth has made this issue important and worth consideration in the modern time. Therein, the exponential growth of population and comparatively lesser available natural resources to sustain it are made a plank for propagation of the mission of family planning. Furthermore, the modern discoveries and inventions in medical technology have also paved the way for certain physical and anatomical alterations in human body, which may collaborate with the said movement. Hence, it has been cherished to undertake a thorough investigation of the issue, from every angle and in the light of various Islamic injunctions, so that the Muslims could judge their relation with the movement of family planning in a better way.

The following kinds of factors and means to achieve the desired results may be found essential to attain lesser population growth by expediting the scheme of so-called family planning.

1. The reproductive ability of both man and woman may be obliterated by surgical operation commonly known as vasectomy and hysterectomy.
2. Averting conception by means of contraceptives up till the desired time.

3. Abortion if the pregnancy is found undesirable.

The motives and methods of birth control may be different. For instance,

- a) Economic: The paucity of economic resources, which render upbringing and education of progeny a Herculean task.
- b) Social: The aspiration to become prosperous than others, to avoid burden of nurturing more children, the problems of working women and social and political engagements of women, which come in the way of proper attention towards children and the preservation of beauty and aesthetic attraction of a woman.
- c) Islamically acceptable excuse.

The detail follows.

The juristic imperatives of each of the above mentioned category is being discussed here below.

A. The Economic Reasons of Birth Control

The idea of birth control on the basis of economic difficulties, paucity of wealth and fear of poverty is entirely non-Islamic and anti-religious and its drive is based on the wrong notion that it is this weak and helpless man who is capable enough to generate his own provision and not the Sovereign and Creator God. Although, the Qur'an has made it explicitly clear that it is only the Almighty Allah who assures of provision for man and other creatures, as:

"وما من دابة في الأرض إلا على الله رزقها".

“There is no moving creature, on the earth but its sustenance dependeth on Allah.”¹

Hafiz Ibn Kathir has noted as regards this verse:

"أخبر تعالى أنه متكفل بإرزاق المخلوقات من سائر الأرض صغيرها وكبيرها بحريها وبريها".
“That is, Allah is the Provider of sustenance to all the creatures moving on the earth, whether they are smaller or larger, belonging to land or water.”²

In another place, there is a divine statement:

"لا تقتلوا أولادكم خشية إملاق نحن نرزقهم وإياكم".
“Kill not your children for fear of want. We shall provide sustenance for them as well as for you.”

Hafiz Ibn Kathir has narrated from the authentic *Ahadith* a statement quoted by Abdullah Ibn Masood in which the killing of children on the ground of economic crisis has been declared as the biggest sin next to the *Shirk*. His words are as follows:

"وفي الصحيحين عن عبد الله بن مسعود قلت: يا رسول الله أيّ ذنب أعظم؟ قال: أن تجعل الله نداً وهو خلقك، قلت ثم أيّ؟ قال أن تقتل ولدك خشية أن يطعم معك الخ".
“Abdullah Ibn Masood asked, the Messenger of Allah (peace be upon him): What is the biggest sin? He replied: That you consider some creation of Allah equal to Him. (He further asked), then? He

¹ Qur'an 11:6.

² Tafsir Ibn Kathir 2:436.

was responded: That you kill your child while fearing that he would share in your food.”¹

Conclusively, killing of children due to fear of impoverishment and destitution is a testimony of lack of faith on Allah the Almighty and of the belief contrary to His capability as a Sustainer of His creation. Hence, the birth control, while keeping this anti-Islamic and unsubstantiated imperative in mind, is definitely improper and prohibited, whether it is of temporary or permanent nature. Permission for birth control having this motive in view cannot be given.

Birth Control for Keeping a Family Small

The idea of keeping family smaller is also contrary to the objectives and directives of the *Shariah*. The expressed objective of marriage as considered in *Shariah* is, of course, the multiplicity of *Ummah* and not the delimitation of a family. That is why, the Prophet (peace be upon him) had always encouraged youth to marry and, commanded that, they should marry such ladies who can love them and honour them with more children, because the Messenger (peace be upon him) would like to feel proud of the largeness of his *Ummah* in *akhirah*.

"تزوجوا الودود الولود فإني مكاثر بكم الأمم".

“Marry those women who love you the most and who give you more children since I would feel proud of my *Ummah* than to others on the ground of its overriding number.”²

The basic objective of marriage is naturally the obtaining of progeny and continuity of human race. Hence, it does not seem

¹ Tafsir Ibn Kathir 3 : 38

² Abu Dawood.

permissible to adopt birth control measures on the ground of keeping smaller families.

Working Woman

Home management is basically the responsibility of woman and man has the onus of outside work. Furthermore, sustenance of family is the obligation of man as the head of family. Hence, a woman is not bound to undertake any work to share expenditures for sustaining her family. The Jurists have written that a husband can prevent a wife from any such action which is undermining his rights or harming him in whatever way or which compels her to leave home for some job. Hence, if the husband feels it proper to prevent her from any job out of home, then he has this Islamically given right and she would be considered an offender if she insists for that, in spite of her husband's denial.

"وفي البحر له منعها من الغزل وكل عمل ولو
تبرعاً لا جنبي الخ، وفي الشامي وينبغي عدم
تخصيص الغزل بل له أن يمنعها من الأعمال كلها
المقتضية لكسب لأنها مستغنية عنه لوجوب كفايته
عليه، وكذا من العمل تبرعاً بالأولى والذي
ينبغي تحريره أن يكون له منعها عن كل عمل
يؤدي إلى تنقيص حقه أو ضرره أو إلى خروجها
من بيته".

"It is mentioned in al-Bahr that a husband can prevent his wife from treating lovingly to a stranger and also from similar indecent things even though this done on remuneration. And, Shami records that it is not only a loving treatment but the husband must have a right on all such matters. He can prevent her from every indecent thing, including a job, for a wife is not obliged to attain a job; her

needs are to be fulfilled by her husband her any such act can be disallowed which earn money. It seems proper that the statement should be like this. “Husband can halt his wife from any such act which is done at the cost of his rights or which cause him injury or loss or which compels the wife to remain out of home”.¹

Anyway, occupation is not an obligation of woman; therefore, she cannot be permitted to adopt birth control measures on the pretext of employment.

Preservation of Beauty

Similarly, there is no permission for birth control on the basis of preservation of beauty of a woman or due to her social interests as they are not proper excuses, which would relax injunctions as in case of certain prohibited and abominable matters. It has been observed that beauty of a woman could remain unaffected in spite of several children whereas in other woman it fades even though the woman could have only a few children. Rather, in some cases women may become even more beautiful after deliveries.

Validity of Vasectomy or Hysterectomy

Vasectomy or hysterectomy are undoubtedly the obvious examples of castration for which the reverend Companions of the Prophet of Allah (peace be upon him) sought permission but were forbade by him. Even they were not permitted to keep separation from their wives or to remain bachelors. The reverend Companions were of the view that had they were permitted for separation from women then they would have gone for castration. The relevant *Hadith* has been included in

¹ Shami 2:665, Chapter An-Nafaqat.

Bukhari and Muslim while commenting on which Imam Nuvi has written:

"وهذا محمول على أنهم كانوا يظنون جواز
الاختصاء باجتهادهم ولم يكن ظنهم هذا موافقا فإن
الاختصاء في الأدمي حرام صغيراً أو كبيراً".
"This derivation comes from the rational thinking of
the Companions that castration is permissible
although their this conjecture was not in accordance
with the import of *Shariah* because castration of
man is prohibited may be a minor or a major one."¹

It is there in Durri Mukhtar:

"وأما خصاء الأدمي فحرام".
"And castration of man is prohibited."²

Moreover, the vasectomy and hysterectomy are tantamount to Change in the Creation which is again prohibited and said to be a devilish action in the Holy Qur'an, as:

"ولأمرنهم فليبتكنّ أذان الأنعام ولأمرنهم فليغيرن
خلق الله".
"And I (Shaitan) will order them to deface the (fair)
nature created by Allah."³

Even, the great Indian scholar Shah Waliullah wrote in his renowned book Hujjat-ul-Allahi al-Balighah, while discussing on this issue, that the amputation of male organ or use of anti-fertility drugs is also tantamount to Change in Creation.

¹ Nawawi 1:449.

² Durri Mukhtar Ala Hamish Radd-e-Muhtar 5:249.

³ Qur'an 4:119.

"وكذلك جريان الرسم بقطع أعضاء النسل
واستعماله الأدوية القامعة للبراءة والتبتل وغيرها
تغيير لخلق الله وأهمال لطلب النسب".

"And similarly the use of such medicines, which completely destroy the coital activity and abstinence from sexual pleasure and amputation of reproductive organs, would be considered as 'Change in the Creation of Allah' and the denial of natural longing for perpetuity of lineage."¹

The Jurists have clarified the issue to the extent that wasting of procreative power is also an offense of the grade of Change in Creation and its retribution would be equal to that of taking away life of some one, as has been said.

"تجب الدية في إبطال قوة حبل من المرأة لفوات
النسل وفي إبطال قوة الحبل من الرجل أيضاً".

"Any damage to the ability of a woman to conceive and that a man to cause her conception shall be retributive because it leads to discontinuity of his lineage"².

Furthermore, the Jurists have fixed the same restitution for damaging the reproductive capability of some one by breaking his vertebral column or by damaging his testicles because it nullifies the objective of marriage, which is meant for increasing one's progeny.

"وتجب الدية في إبطال قوة الأماناء بكسر صلب
لفوات المقصود وهو النسل".

¹ Hujjatulla hil-Baligha 2:123.

² Al-Fiqh ul Mazahib Al-Arba'a 5:341.

“Retribution becomes obligatory in a case when testicles are broken to destroy the reproductive ability of a man because the objective of marriage is lost, i.e. the continuity of a lineage”.¹

Hence, in both the normal or exceptional situations surgical measures of birth control leading to permanent infertility have no scope in the Islamic *Shariah*.

Exceptional Permission for Operation

The *Shariah* has allowed some taboos in certain exceptional and compelling situations. For instance, if some eatable has choked the throat and there is an apprehension that some one would succumb to that, then he is permitted to use wine to remove that burden if so needed. Similarly, one is allowed to eat meat of a dead animal so as to save one’s life, which is normally considered to be a forbidden act. This is an axiomatic principle of Jurisprudence that:

"الضرورات تبيح المحظورات"

"والضرورات تتقدر بقدر الضرورة"

“Necessity makes non-permissible permissible.”

And, “Necessity is applicable till it persists”.

If the health of a woman deteriorates and if a genuine doctor declares that her health could not be recovered without undergoing the pertaining operation then this is permitted. The apprehension of life of a woman justifies relaxation of injunction of the *Shariah* regarding the process of reproduction. After the third caesarean operation there is a great apprehension of death of mother at the time of fourth delivery, therefore, in

¹ *Ibid.*

such circumstances her operation may be permitted.

Maulana Abdul Rahim Lajpuri has also given permission for operation on the basis of severe necessity of a woman. His statement may be seen as:

“When the conception becomes difficult to sustain due to weakness and ailment of the woman and the pregnancy becomes unbearable, then at the outset she should be treated in such a way that she becomes fecund for a long time, i.e. she could not conceive. And, if this short-term measure does not fulfill the purpose, then she should be permitted to undergo operation according to the advice of a genuine or expert Muslim doctor. In this context, the advice of a non-Muslim doctor would not be authentic.”¹

Maulana Mujahidul Islam Qasmi responded to an enquiry in this regard in these words:

“If a man has got his wife operated (for hysterectomy) due to her ill-health to avoid a larger harm on the basis of proper advice of a dependable doctor then he is exempted for this and if he has done so fearing multiplicity of children then he is an offender and his leading in prayers stands unappreciable.”

The opinion of this renowned expert of *Shariah* explicates of permissibility of operation of a woman in case of severe emergency or apprehension of greater harm. Furthermore, such a sanction seems possible in the view of opinion of Maulana

¹ Fatawa Rahimiyah 3:215.

Minnatullah Rahmani as expressed in his booklet “Family Planning”. He writes:

“Undoubtedly, this matter is worth consideration that if the health of any woman is not suitable for bearing pregnancy and its aftermath, as confirmed by an expert physicians, and that her life would be at stake as a consequence thereof, then she could be advised for appropriate measures which might be essential for her health and for saving her life.”¹

Permitted Temporary Methods

The use of temporary methods for the prevention of pregnancy falls under the category of injunctions regarding *Azl*, i.e. Withdrawal. Regarding *Azl*, the juristic point of view differs on the ground of its permissibility or non-permissibility, avoidability or non-avoidability, etc. Allama Usmani was of the opinion, while thoroughly considering the issue in his commentary on Muslim Sharif titled “Fath ul-Malham”, that although *Azl* is reprehensive (*Makruh*) but it is not prohibited (*Haram*) as well.

"فالذي يترجح من مجموع الأدلة كراهة العزل
وكونه غير مرضى من غير تحريم".

“What is becoming evident from all the proofs is that *Azl* is odious and a disliked act and not a prohibited one.”²

Hence, in the normal situation the use of contraceptives is not permitted but, if there is any acceptable excuse, then, due

¹ Khandani Mansubabandi P. 25.

² Fatah ul- Mulhim 3:514.

permission may be given for temporary measures of birth control.

The Problem of Birth Control

Mufti Zafiruddin Miftahi
Darul Uoom Deoband

Why the reverend Adam was descended from the paradise to the earth? The conclusion of serious thinking in this regard would produce the only answer that it was to disseminate his progeny to each nook and corner of the planet earth. And, the growth of human population on earth solely depends on the contact and relation of man and woman. That is why, nature has bestowed in both of them mutual attraction and sexual desire. The life of a man does not become complete until and unless he enters into a bond with a pious lady. As such, both are complimentary to each other. In spite of immense wealth, if a suitable spouse is not available then life would really become miserable. Both, the man and woman, find tranquility and satisfaction only when their natural bond has grown into an affectionate reality, otherwise, they may generally find their lives worthless.

The birth of children and their upbringing is related to this conjugal life of human beings and, starting from the first couple of Adam and Eve, this chain of relations is still continued. The *Shariah* has emphasised the importance of marriage only in this background. The Prophet of God (peace be upon him) has said:

"النكاح من سنتي فمن رغب عن سنتي فليس مني".
"The marriage is my tradition, the one who discontinues it, is not mine."¹

The Qur'an has urged man to keep in mind the objective of marriage for which Allah has made it essential:

¹ Mishk'at.

"فأتوا حرثكم أنى شئتم".

“From the tilth of land man grows crops and from the tilth of woman he procreates offspring.”

For quite sometime the western scholars have wrongly calculated that if the present state of growth of human population remains unabated, then in future, the mankind would have no food to eat, no land to live on and so on. Hence, it is necessary for each individual to limit his family and none should have more than two children. This is commonly termed as “family planning” and its several benefits have been pleaded, e.g., the family would remain happy, the education and rearing of (limited number of) children would be of high standard, the beauty of woman would be preserved and remain lasting and so on.

Then, various means and techniques of family planning have been thought of and their publicity was made from country to country and thus the idea came to our country as well and, at one time, even forced family planning was imposed on Indian people by the government (when emergency was imposed by the erstwhile Prime Minister Mrs. Indira Gandhi on 25 June 1975). May Allah reward *ulema* and other experts, especially Maulana Minnatullah Rahmani, the Ameer-e-Shariat Bihar and Orissa, who stood mountain strong in the way of this persecution. The *ulema* remained unmoved in the testing time even under governmental pressures.

Actually, the issue deserved that. The *ulema* should remain steadfast on the injunctions of the Qur’an and Prophetic Traditions. It is pointed out in the Holy Qur’an:

"ولا تقتلوا أولادكم خشية إملاق نحن نرزقهم وإياكم".

“Do not kill your children with the fear of loss of resources. We will feed them as We feed you.”¹

"ولا تقتلوا أولادكم من إملاق نحن نرزقكم وإياهم".
“Do not kill your children with fear of resources.
We feed you and We will feed them.”²

This doubt that if the children are more, then who will feed them and how they will be grown up, is cleared by the Qur’an that our provision and the provision of all the coming generations is in the hand of Allah and He has been sustaining mankind from the day one and will be the Sustainer of human beings in the future as well.

The Islamic *Shariah* does not appreciate even for a moment to permanently remove the procreative capability of any person as it may affect the growth of human population. Some of the Companions of the Prophet (peace be upon him) sought permission from him to castrate themselves. But, he refuted and refused such a proposal. In the light of this standpoint, the Jurists have propounded that”

"خصاء الأدمي حرام".
“Castration of man is forbidden.”

The learned scholar Shah Waliullah stated, while explicating the philosophy of sexual desires of human beings, that:

"وكان أعظم أسباب النسل الخ هو شهوة الفرج
فإنها كالمسلط عليهم يقهرهم على ابتغاء
النسل أشاؤا أو أبوا".
“The major way of conservation of human race is
designed in the sexual desire which becomes

¹ Sura al-Israa: 31

² Surah An’am: 151

dominant on man and compels him to think of his progeny, willingly or unwillingly”.¹

This power which becomes the means of human perpetuity, if damaged and wrong patterns of sexual relations get currency, then it would be like “altering the nature created by God” or like completely destroying it. This is also called as Change in the Creation of Allah:

"وكذلك جريان الرسم بقطع أعضاء النسل
واستعمال الأدوية القامعة للباءة والتبتل وغيرها
تغيير لخلق الله وإهمال لطلب النسل".

“The amputation of male organ, the use of drugs suppressing sexual desire, preference to bachelor life, etc. are really alteration in the Creation of Allah and it is like giving up the interest of continuity of human race.”²

The *Shariah* has seriously objected to damage the procreative potentials of man and woman and termed it as an offense and sin, and the compensation for which has been fixed equal to a murder:

"تجب الدية في إبطال قوة حبل من المرأة لفوات
النسل الخ وفي إبطال قوة الحبل من الرجل".

“Any permanent harm to the capability of woman to get conceived and the capability of man to conceive her would qualify for the compensation of Blood Money, *diyyat*, since it obliterates (the growth of) the human race.”³

¹ Hujjatullahil Baliga.

² *Ibid.*

³ Al-Fiqh Ala al- Mazahia al-Arbiyah.

Thus, it becomes evident that it is not permissible to destroy reproductive capability of any person permanently, rather, it is forbidden and *Haram* and is an unpardonable religious crime, that is why, we clearly state in our edicts that it is not proper to destroy one's reproductive capability by means of vasectomy or removal of womb of a woman.

Another situation may be that of prevention of pregnancy on temporary basis only. The *Shariah* does not permit it until there is some strong acceptable excuse for the desired exemption. In the ancient times, *Azl* was the known technique, now it has turned into condom, loop, etc. The same could not be permitted because the Prophet (peace be upon him) has commanded thus:

"تزوجوا الودود الولود فإني مكثركم الأمم".
"Marry with such a woman who is expected to give
you more children and who could love you much."¹

The conclusion of this injunction is that more children should take birth and there should be no restriction on it. The *Ummah* of Muhammad (peace be upon him) should grow more in numbers and the Muslim population should override others. The history witnesses that the Muslims have been following this principle with care and the birth of more children have never been taken with cold response. The Muslim population has been growing due to propagation of Islam on the one hand and, on the other, due to following the spirit of the above stated *Hadith*. Even today, people are watching with concern that the Muslim population is increasing faster than others and their growth rate is more than other nations.

Those who advise the Muslims to adopt family planning or to propagate it among them, and appreciate it, are having a wrongful behaviour according to the *Shariah* and are evildoers because this is against the spirit of the above-quoted *Hadith*.

¹ Mishkat.

However, this may happen that a woman, suffering from some serious disease or due to some other reasons, approaches the *muftis* for guidance and decree in her personal case asking about the temporary postponement of pregnancy, and if her excuses are really worthy of consideration, then, she may be exempted on temporary basis. Being unable to bear the burden of pregnancy or delivery due to ill health, etc. she is permitted by Islam to use pills, loop and her husband can use condom, etc. to avoid pregnancy. However, its condition is that a religious minded Muslim doctor should endorse the severity of her problem. This has been conjectured on *Azl*, which has been mentioned in *Ahadith* and the Jurists have explicated about it in their judgements.

The general permission of *Azl*, as has been given by some of the Jurists, is not appropriate. The application of *Azl* without any genuine reason is not devoid of odiety, *ikrah*.

There is a talk about abortion these days. Actually, this is not a good action and it has not been appreciated by the *Shariah*, as has been explained in the above. However, there might be some exceptions among these cases as well and a woman is forced to opt for abortion so that her life may be saved and the foetus might not be proved fatal for her.

The principle laid down in Jurisprudence is that if the foetus has become live then its abortion is altogether forbidden. Rather, it would be *Haram*. And, according to the *Shariah* this action would be considered as an offense and there is a fixable penalty on it. The Islamic stalwart Ibn Taimiya explicates:

"إسقاط الحمل حرام بإجماع المسلمين وهو من
الواد الذي قال تعالى فيه: وإذا الموءدة سئلت بأيّ
ذنب قتلت".

“There is a Consensus that abortion is forbidden and this is one way of burying some one alive on which Allah has said: The girl buried alive would be asked, “For what you were killed?”

Birth Control and the Qur'anic Viewpoint

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At the time of Qur'anic revelation three methods were in vogue for the killing of born or unborn children.

1. The first kind of foeticidal practice was due to the prevalent superstitions wherein children were sacrificed for certain objectives in the name of popular gods and goddesses. This sort of evil tradition has been commented upon by the Qur'an in these words:

"وكذلك زين لكثير من المشركين قتل أولادهم
شركاءهم ليردوهم وليلبسوا عليهم دينهم ولو شاء
الله ما فعلوه فذرهم وما يفترون"¹.

"Even so, in the eyes of most of the Pagans, their "partners" made alluring the slaughter of their children, in order to lead them to their own destruction, and cause confusion in their religion if Allah had willed, they would have not done so: but leave alone them and what they forget."²

And, the killers of their own offspring under the influence of paganist superstitions have been referred in the ensuing verses in these words:

"قد خسر الذين قتلوا أولادهم سفهاء بغير علم
وحرموا ما زرقهم الله افتراءً على الله قد ضلوا وما
كانوا مهتدين".

¹ Qur` an 6: 137.

² Translation Sheikhul Hind.

“Lost are those who slay their children, from folly, without knowledge, and forbid food which Allah hath provided for them, forging (lies) against Allah, they have indeed gone astray and heeded no guidance.”¹

This ritual was vogue among the superstitious people in ancient times in most of the inhabited world and even found today as a degenerating custom in countries like India.

2. The second way of such a murderous trend could be found in the Arab practice of killing the she-baby by burying them alive. This heinous tradition was a common practice in the Arab society where birth of a girl child was taken as a curse. As stated:

"وإذا الموءدة سئلت بأيّ ذنب قتلت".
“When the female (infant), buried alive, is questioned....for what crime she was killed?”²

In the chapters *Nahal and Zukhruf* of the Qur’an this barbaric custom was said to be due to over emphasis on self-esteem whereby some of the sensitive people of society would prefer only sons as inheritors and not the daughters. But they believed that Allah has daughters in the form of angels (or goddesses). Furthermore, they thought that women are physically very weak, mentally and intellectually lag behind their male counterparts and normally get subdued in debates and discussions:

"وهو في الخصام غير مبين"
“And, he dose not have an explicit ability of disputation”.

¹ Qur’an 6:14.

² Qur’an 81: 8-9.

Apparently, this weaker section of society could hardly earn equal to men, hence, people were not inclined to the burden of rearing a lesser earning girl child in comparison to boys on whom their investment would be more rewarding in terms of earnings. Today, the rampant problem of dowry has led the society to such a critical situation where not only the girls but even their parents commit suicide due to compulsions of dowry. So, the birth of a girl child is considered equally lamentable by some of the sections even today, as was in the ancient Arabs before the advent of Islam.

"وإذ بشر أحدهم بالأنثى ظل وجهه مسوداً وهو كظيم".

“And, when any one of them is blessed with the good news of daughter, then he does not have glare for the whole day and he feels suffocated inside his heart”.

3. And the third reason was the economic one and the Arabs did not hesitate to kill their children due to impoverishment or hunger. This has been referred in the Qur’an on two places:

"قل تعالوا أتل ما حرم ربكم عليكم ألا تشركوا به شيئاً وبالوالدين إحساناً ولا تقتلوا أولادكم من إملاق نحن نرزقكم وإياهم".

“Say: Come, I will rehearse what Allah hath (really) prohibited ye from: Join not any thing with Him: Be good to your parents; kill not your children on a plea of want; We provide sustenance for you and for them.”¹

And in the second place:

¹ Qur’an 6: 151.

"ولا تقتلوا أولادكم خشية إملاق نحن نرزقهم
وإياكم إن قتلهم كان خطأ كبيراً".

"Kill not your children for fear of want; We shall
provide sustenance for them as well as for you.
Verily the killing of them is a great sin."¹

In both the verses, not only the killing of children due to hunger and poverty has been mentioned, but also its very motive has come under severe attack as being false. It has been brought into mind, in these verses, that the provisions for man are made available by the Almighty Allah and not by the parents or other human beings. In the preceding passage of the later verse, quoted above, it has been made evident that the provision of any person is only in the hand of God. He increases the provision of some if He so likes or keeps it limited if He so wills.

"إن ربك يبسط الرزق لمن يشاء ويقدر أنه كان
بعباده خبيراً بصيراً".

"Verily thy Lord doth provide sustenance in
abundance for whom He pleaseth, and He straitens
it for He doth know and regard all His servants."²

The Quran has variously brought home this reality that God bestows the provision for any existence only. It would be a fallacy that a man considers himself as the provider of his own sustenance or to his children. Man is only a means and via media in the divine scheme. Allah makes provisions for man from the sources one could hardly imagine of:

"ومن يتق الله يجعل له مخرجاً ويرزقه من حيث لا
يحتسب ومن يتوكل على الله فهو حسبه".

¹ Qur'an 17:31.

² Qur'an: 17: 30.

“And, for those who fear Allah, He (ever) prepares a way out. And He provides for him from (sources) he never could expect.”¹

It is Allah only Who sustains the lives of insects, larger animals or birds:

"وما من دابة في الأرض إلا على الله رزقها".

“There is no moving creature on earth but its sustenance dependeth on Allah.”²

Those Muslims who were unwilling to migrate from Makkah and remained content in the land of transgression and persecution, with an apprehension what would come of their sustenance in an alien country, were not only told, “indeed My land is very vast”, but were also inspired by the statement:

"وكأين من دابة لا تحمل رزقها الله يرزقها وإياكم

وهو السميع العليم".

“How many are the creatures that carry not their own sustenance? It is Allah Who feeds (both) them and you: for He hears and knows (all things).”³

Allah has mentioned in *Surah Vaqia* regarding His Being the Sustainer and Provider in a persuasive way. In *Surah Nisa* the affairs of inheritors and other matters have been explicated wherein man is oriented towards deprived and destitute people with a sympathetic mind and he transgresses the limits of justice with an altruist enthusiasm and conditioned by God, thus:

¹ Qur'an 65: 2-3.

² Qur'an 11:6.

³ Qur'an 29: 60.

"يا أيها الذين آمنوا كونوا قوامين بالقسط شهداء لله ولو على أنفسكم أو الوالدين والأقربين أن يكن غنياً أو فقيراً فالله أولى بهما فلا تتبعوا الهوى أن تعدلوا وأن تلووا أو تعرضوا فإن الله كان بما تعملون خبيراً".

"O ye who believe! Stand out firmly for Justice and witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor; For Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice. Verily! Allah is well acquainted with all that ye do."¹

The words "whether it be (against) rich or poor" in the verse under discussion are worth pondering. That means, the imperatives of truth should be heeded to and responsible men should not ignore with a feeling to favour poor and destitute against the rich and wealth. Rather, their affairs should be left over to Allah and one should better remain firm on truth and justice. Who is better caring than God Himself?

It is apparent from the foregoing discussion that it is a beastly and barbaric attitude of man to kill his offspring with a fear of provision and sustenance as expounded by the Qur'an. Even in the present time such frightful news of foeticidal tendencies may be heard from some poor countries including India. The Qur'an tends to remove this human ignorance and makes it evident that providence of both the guardians and wards is in the hand of Almighty God. Hence, man should remain away from the killing of his own children, being perplexed on the ground of upbringing of

¹ Qur'an 4: 135.

them in appalling hardships because Allah says: **"نحن نرزقكم وإياكم"** "We provide sustenance to them and you".

While reaching to this point, the question arises whether the prevalent movement of birth control, family planning or population control should be considered a case similar to foeticide as has been forbade in the Qur'an? Apparently, it seems to be a thing apart and that the traditional cruelty is not present in the modern methods of population control which have been historically known but the motive for killing one's own child, as mentioned in the Qur'an, is applicable to the ever innovative measures of birth control. That means, the way ignorant Arabs happened to consider themselves as the sustainer of themselves and that of their families, the modern "civilised man" do find himself in the same role, and the concept of God as the Sustainer and Providence goes out of his sight. That is why the modern schemes of birth control might not seem that much barbaric and heinous as were known in the ancient times but the motive and basic philosophy for doing so remains unaltered. The way the Arabs thought themselves of making provisions for life, the modern people do think in the same way.

In our view, whatever, is going on in this regard at governmental level is a sheer intervention in nature and imposition of humanly felt things therein. The actual responsibility of any government lies in the promotion of economic development, in employment generation and in the betterment of people is life by encouraging saving, balanced approach and cautious spending. It should save itself from ostentation and wasteful approaches, and save people from over use of natural resources. It should eschew from spending too much on weaponry and war technology and should eradicate plundering, corruption, black marketing, hoarding and bribery from society and secure the life and property of citizens. However, its planning and budgeting of resources, based on population control, is beyond its known responsibilities and comes under the divine realm.

In this way, the vulgar techniques of birth control in ancient times have taken a civilised face but the basic approach remains the same.

Let us think on this issue from one more angle. God has created every thing in pairs and nothing has been created solitary.

"ومن كل شئ خلقنا زوجين لعلكم تذكرون".

“And of every thing We have created pairs: that ye may reflect.”¹

And said in another place:

"سبحان الذي خلق الأزواج كلها مما تنبت الأرض
ومن أنفسهم ومما لا يعلمون".

“Sublime is He Who created all things in pairs, those produced by the earth and within their own self and in things not known (yet).”²

And man has also been created as a pair:

"وخلقناكم أزواجاً".

“We have created you in pair.”³

In reality, this is a proof of Allah and logic for Hereafter, the details of which are not required here. However, what is to be made obvious is that such a creation is also due to the fact that men may compliment each other. According to this natural law, men have been divided into two categories male and female, and each gender

¹ Qur'an 51: 49.

² Qur'an 36: 36.

³ Qur'an 78: 8.

has a natural orientation towards the other and by coupling of both the genders a family life completes.

"فاطر السماوات والأرض جعل لكم من أنفسكم أزواجاً ومن الأنعام أزواجاً".

"The Maker of heavens earth hath created from among you your own pairs and also made pairs from animals."¹

This is because the meaning of the existence would foster an environment of love and affection and would make them bear together the hardships and challenges of life, which would become really bearable in each other's company.

"ومن آياته أن خلق لكم من أنفسكم أزواجاً لتسكنوا إليها وجعل بينكم مودة ورحمة إن في ذلك لآيات لقوم يتفكرون".

"And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them and He has put love and mercy between your (hearts); verily in that are Signs for those who reflect."²

For Allah has established the continuity of life and human race through the process of this sum of conjugal life. On the one hand, there is a racial connection which binds man from the past generations and there is a relation of marriage which joins man to the future human world. In this way, the man who is basically lonely finds himself in the web of relations everywhere. This yields into a long chain of kith and kin, uniting each part with the other. Allah states:

¹ Qur'an Ina'am.

² Qur'an 30: 21

"وهو الذي خلق من الماء بشراً فجعله نسباً
وصهراً".

"It is He Who has created man from water; Then has
He established relationship and lineage and
marriage."¹

And from the linkage of race and marriage a lot of families and
tribes come into existence:

"والله جعل لكم من أنفسكم أزواجاً وجعل لكم من
أزواجكم بين وحفدة".

"And Allah has made for you mates of your own
nature, and made for you, out of them, sons and
daughters and grandchildren and provided for you
sustenance of the best."²

This process of procreation and racial perpetuity brings into
existence an ever increasing human population and the dispersal of
mankind in each nook and corner of the earth. The Qur'an informs:

"يا أيها الناس اتقوا ربكم الذي خلقكم من نفس
واحدة وخلق منها زوجها وبث منهما رجالاً كثيراً
ونساءً".

"O mankind! Fear your Guardian Lord, Who
created you from a single person, created, out of it,
his mate, and from them twain scattered (like seeds)
countless men and women."³

¹ Qur'an 25: 54.

² Qur'an 16: 72.

³ Qur'an 4: 1.

Is it not evident from these verses that the earth becomes lively only due to human beings, and, therefore, the Qur'an stresses upon the enhancement of human race and refers the vastness of mankind and its inhabitation in all the parts of the living planet? In these verses no fear has been expressed due to increasing population as has been felt by the modern policy makers. The author is not mentioning here about the treasure of *Ahadith* on the subject under discussion, in order to prevent the article from further details.

The Qur'an has time and again diverted our attention towards this reality that the whole universe has been made pliant and benefiting for mankind and man has also been made responsible for something understood as *huququllah* (Rights of Divine) and *huququl abad* (Rights of Fellow Beings). In the terminology of Islamic *Shariah* this is called as worship, ethics and dealings. The holy Qur'an has interpreted them in the words "Sound Faith" and "Good Action". May be that some people would consider such responsibilities as burden for themselves and may found the social relations and marriage institution as an unnecessary bond and burden and, therefore, would tend to get rid off from the same. However, this concept and thinking is contrary to the Qur'anic viewpoint which has been explained in the above and, here, this Qur'anic explanation would be pertinent:

"لا يكلف الله نفساً إلا وسعها".

"There is no burden upon (man) beyond one's own capacity."¹

Thus, it becomes apparent that whatever burdens and responsibilities bestowed upon him are within the capacities and capabilities of man and he has not been unnecessarily bound with certain incumbencies:

¹ Qur'an 2:

"وما جعل عليكم في الدين من حرج"

“And (He) has imposed no difficulties on you in Religion.”¹

In the last, it is submitted that no rule of law may be without exceptions. If the situation is really so compelling wherein the measures of birth control would become indispensable and unavoidable, then it would lead to permission for contraceptive measures. But, such a situation would arise only individually and such a situation would be only rarely for the whole society. In such a circumstance the experts may so discuss the issue and make provisions to remove the burden of mankind. The techniques of *AzI* as adopted by some of the Companions of the Prophet (peace be upon him) are also individual cases. The following verse of the Qur’an substantiate it:

"يريد الله بكم اليسر ولا يريد بكم العسر"

“Allah wants relaxation in your affairs and not coercion.”²

Then, so long as the case of serious illness or its apprehension in this regard is concerned how it may be viewed against that? The way the Qur’an has exempted patients from participation in the Holy War and gives relaxation to them in other religious matters, such people might be given relaxation in the matter of birth control as well.

And if the *Shariah* has allowed eating of *Haram* (forbidden) meat in certain exigencies, then in this case also, if a person while having full faith on God is inclined to adopt contraceptives or birth control techniques due to certain dire needs and diseases, then from the Qur’anic angle there would be no harm in doing so.

¹ Qur’an 22:78.

² Qur’an 2:

Lastly, the Qur'an has made it evident that human life in the hereafter should get actual preference and instead of being enchanted by the worldly charms the man should keep the perennial life of hereafter in view. However, the Qur'an also supports that this world's life should also be made good, comfortable and pleasing. This should be a common prayer of Muslims:

"ربنا آتنا في الدنيا حسنة وفي الآخرة حسنة وقنا عذاب النار".

"O God! make our this life better and make the life hereafter better and save us from the Hellfire."¹

Hence, while keeping in view the Pleasure of God, we should apply all the qualities and capabilities provided by Him to improve our life in this world without bringing the life in Hereafter at stake. And, if it becomes imperative to use birth control as an essential evil it should be adopted without hesitation, however, without affecting one's faith on God as the Sustainer of mankind. The basic thing is intention, which should be appropriate. We can hide it from the people but we cannot conceal it from the One Who knows all our thinking and action:

"إن الله لا يخفى عليه شئ في الأرض ولا في السماء".

"Nothing is hidden from God whatever is there is the earth or in the heaven."²

¹ Qur'an 2: 201

² Qur'an 2: 3:5

Birth Control In Islamic Perspective

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No explicit injunction is available in the Qur'an and the traditions of the Prophet (peace be upon him) as regards birth control. Consequently, the Islamic Jurists have differing opinion on the issue emanating from the understanding of circumstances, need, removal of burden on man and public interest involved therein. The permissibility or non-permissibility, reluctant use or inclination pertaining to birth control measures depends grossly upon the ways and means adopted in this regard. Such measures may be of permanent nature with irrevocable effects on reproductive processes or may be of temporary nature with revocable changes or intervention in the reproductive processes.

Permanent Measures

The permanent and irrevocable methods of birth control, vogue in the present time, may be enumerated as under.

1. Vasectomy

In this method, the seminal vesicles or fallopian tubes may be cut off and tied on both the ends to prevent movement of ovum or sperm towards uterus for ultimate fertilisation.

2. Tubal Legation

In this method the above-said reproductive ducts are not cut but knotted in the way that ovum or sperms may not move further from the knotted part and thus fertilisation does not materialise.

3. Hystrectomy

This method involves permanent removal of uterus from a female body causing cessation of any fertilisation thereafter.

All these three methods are affected by surgical operations. From the Islamic point of view these methods may not generally be considered permissible. However, the experts differ in case of tubal ligation which is regarded by some of them as a semi-temporary method because by surgical operation the knot of affected reproductive duct may be undone and fertilisation is made possible once again in due course.¹

However, it is just a possibility otherwise in normal practice this is not done and this may be included in the general means of artificially affected infertility. The hysterectomy is normally applied in exceptional cases only specially when the uterus develops septic and there is an apprehension that it would spread in the whole body and, hence, it may be regarded as unavoidable.

The non-permissibility and impracticability of these measures is due to the fact that they cause permanent damage to procreation and thereby disturbing a conjugal relation of a couple. Rather, it contradicts with the very objective of marriage institution as spelled out by the Islamic *Shariah*. It is tantamount to castration, which has been forbidden by the Prophet (peace be upon him). So, it is narrated from Abdullah Ibn Masood that:

We accompanied the Messenger of God in a war and we were devoid of ladies. We asked the Prophet whether we should undergo castration, then he denied it.

¹ Tahir Mahmood, Family Planning, PP. 95, Delhi, 1997.

One more narration regarding castration appears in the report of Saad bin Abi Waqqas.

Again, this change would be regarded alteration in the creation of God since these measures modify some of the internal organs depriving a person from their otherwise long lasting benefits.

Temporary Measures

The temporary and non-permanent methods of birth control are somewhat popular these days. Out of these, some of the techniques were prevalent even during the time of Prophet himself (peace be upon him) and most of them established their utility as a result of progress in the medical science and modern discoveries in the field of science and technology. Some of the well-known temporary measures vogue nowadays are as follow:

1. 1. Abstinence
1. 2. Withdrawal or Coitus Interruptus
2. 3. Planning of Intercourse
4. Condom
5. Suppidileries
6. Pills
7. Injection or Vaccination
8. Douch
9. Closing of Uterus by Copper-T, etc.
10. Abortion

From the above list the first two techniques may be considered permissible without any hesitation since, while applying them, no such means of artificial function become necessary which a couple should adopt as in case of other techniques. The Prophet (peace be upon him) gave permission for intercourse during suckling period, which was technically known as *ghila*. He said:

"لقد هممت أن النهى عن الغيدة فنظرت في الروم
وفارس فإذا هم يغيلون أولادهم فلا يضرهم أولادهم
شيئاً".

"I intended to disallow you to have intercourse during the nursing period of the child. When I saw that the Romans and Persians feed milk to their offspring after delivery and they face no harm due to that so I am not preventing you from the act."¹

The planning of intercourse may be considered here permissible, beyond doubt, because husband has this right to copulate with his wife as and when he desires or does not do so if feels unwilling. Rather, such a planning would be desirable from health, moral and spiritual point of view. In this regard any planning would require restraining of a husband during a period extending before and after the middle of a menstruation cycle. The ovum is generally released for fertilisation around the fourteenth day after the beginning of menstruation. Therefore, such self-control of husband for about ten days (from 10th to 20th day) would prevent fertilisation and, consequently, any conception. He can enjoy natural pleasure in rest of the pure days. Once an ovum fails to contact sperms within a short period while it stays in uterus, then it starts liquidated and thrown out along with menstrual fluid.

In all of the other techniques the husband or wife has to adopt any temporary aid in the form of a mechanical device to prevent merger and contact of ovum and sperms and, therefore, should be included under the category of *Azl* (Withdrawal) as was known during the time of Prophet (peace be upon him) as an effective anti-fertility technique.² However, the chemical contraceptives like oral pills or anti-fertility injections cause negative effects on human body in the

¹ Muslim, the book of marriage.

² The Jurists have gone to such an extent in this regard, as may be noted in the statement of Raddi Muhtar.

form of side effects. Hence, their use should be made only under the advice of a competent physician because conservation of health is said to be essential for people in the light of teachings of the Qur'an and the Prophetic Traditions and a person would be answerable about his or her health on the Day of Judgement.

So, long as the use of *Azl* is concerned although several jurists consider it permissible, however, with some reservation. But there are some jurists as well who do not feel any reservation in this regard. Most of such experts allow *Azl* with a condition that it should be practiced with the permission of wife. Hence, one can find that three of the four great Islamic jurists allow *Azl* provided that the said condition is fulfilled.¹ This statement of Abdullah Ibn Umar has been noted by Imam Abu Hanifa in his commentary on the verse "نساكنكم حرث لكم فأتوا حرثكم أنى شئتم" "Your women are your tilth, approach them as you like" that if you so like practice *Azl*.² The author of Durri Mukhtar explicated that "يعزل" "عن الحرة بإذنها" "It is permitted to observe *Azl* with a free woman without her permission"³. Imam Kaisani says that the practice of *Azl* without the permission of wife is not proper (*Makruh*) and if practiced with her permission then it is not *Makruh* (odious).⁴

Here the precondition of wife's permission is in accordance with the spirit of Islam. Since, both the husband and wife share the pleasure of conjugal life, and are complimentary to each other and interdependent, hence, consent of both for a sexual act should be given weightage. Again, procreation is a collective right of both of them, rather wife has more right than her husband from a number of angles in spite of the importance of husband, as recognised in Islam. Woman is not a "tilth" of human race in the sense that it

¹ Fath ul-Bari On Bukhari, Vol. 9:247.

² Abu Bakr Hassas, Ahkam ul-Qur'an 1:416.

³ Radd ul-Mukhtar On Durri Mukhtar, P. 379.

⁴ Badae usSanae, 2:334.

gives proprietary right to the husband but it is from the point that he has been given larger responsibilities in society or as a consequence of division of work.¹

The reluctant permission of some of the jurists should not be equalised with the prohibition of *Azl*, rather it may be considered as *tanzih* (reprehensive) and contrary to the former. Hence, Imam Ghazali has explained that "والصحيح عندنا أن ذلك مباح" the correct approach in this regard would be that it is *mubah*, that is acceptable.² There is a need to critically examine the reasons of reluctance and acceptability of *Azl* on the basis of which divergent opinions of jurists may be found. *Azl* has not been explicitly forbid in the most of narrations from the Prophet (peace be upon him).

In this context, reverend Jabir says:

"كنا نعزل والقرآن ينزل"

"We practiced *Azl* (Withdrawal) while the Qur'an was being revealed."³

In Muslim, there is a narration:

"كنا نعزل على عهد رسول الله صلى الله عليه

وسلم فبلغ ذلك نبي صلى الله عليه وسلم فلم ينهنا".

"We used to practice *Azl* during the time of Prophet (peace be upon him) and it was reported to him but he did not forbade us from doing so."⁴

¹ Under some circumstances the permission or denial of a wife may be considered equal for instance it has been mentioned on Fatawa Qazi Khan "إن خان من الولد السوء في الحرة يسعه العزل بغير رضاها لفساد الزمان فليعتبر قبله من الأعدار مسقطاً P. 380. لأنها أيضاً"

² Ehyae Uloomiddin2:51.

³ Bukhari, the Book of Marriage.

⁴ Muslim, the Chapter of Marriage.

It becomes evident from these authentic statements that *AzI* (Withdrawal) was a known practice during the period of Qur'anic revelation but no verse was revealed in the denial of the said practice. Hence, Sufiyan bin Animiya says:

Had the *AzI* been forbidden, some verse would have been revealed to that effect.¹

The Prophet (peace be upon him) did not prevent his Companions from this practice although he was aware of it. Had the Withdrawal been something unacceptable he would have clearly expressed so. In the light of another statement, reported from him, one can say that his presumable reluctance was not due to its forbidden nature but it was on the moral ground and on the basis of preference. Hence, it may be seen that when one person approached him to seek his permission for *AzI* then he asked: Why do you do so? The man replied that it was due to parental affection (for the existing child who is yet in the nursing period whose health may be affected due to new pregnancy). On this, the Prophet retorted thus: Had it been harmful it would have harmed the people of Persia and Rome.² In this statement the Prophet did not forbade the practice as such, but by, giving another angle for contemplation.

One narration of Abu Saeed Khudri is this:

"لا عليكم أن لا تفعلوا إذا كم فإنما هو القدر."
"When I asked the Prophet (peace be upon him) about *AzI* then he told: There is no harm if you give up this because none can avoid or alter the fate."³

¹ Fath ul-Bari, 9:245.

² Muslim, the Book of Marriage.

³ *Ibid.*

Some experts derive the aspect of negation from this statement.¹ But, it is difficult to agree with this derivation since the crux is not “There is no harm in giving up” rather “you would definitely receive what is your fate”. It becomes even more obvious from a narration of reverend Jabir that: I have a slave maid from whom I enjoy some pleasure but I am not inclined that she should conceive. Then the Prophet (peace be upon him) said:

"أعزل منها إن شئت فإنه سيأتيها ما قدر لها"

“If you so like you can carry on *Azl* with her but whatever is there in her fate she would definitely receive that.”²

There is another narration from Jabir which makes it clear that *Azl* was in practice among the Companions even after the time of the Prophet (peace be upon him), hence, he replied to the query regarding *Azl* thus: "كنا نضعه"³

There is a narration from reverend Abu Saeed Khudri in which the Prophet (peace be upon him) has been quoted, as condemning the view of the Jews that *Azl* is a minor foeticide. His words are as follows:

"كذبت يهود إن الله عز وجل لو أراد أن يخلق شيئاً"

لم يستطع أحد أن يصرفه"

“Jews have lied. If God has decided to create some thing there is nothing preventing him.”⁴

And, there is a narration of KHazma bint Vahab in comparison to these narrations that when the Prophet (peace be upon him)

¹ Nail ul-Awtar, 6:348, in the statement of Ibn Seereen.

² Ahmad, Muslim, Abu Dawood.

³ Ahmad.

⁴ Ahmad, Abu Dawood, Tirmidhi.

was once asked about *Azl* then he stated: "ذلك الواد الخفي"
"This is a minor foeticide."¹

While objecting the above-referred statements, the experts on *Ahadith* have considered this above narration as weak (*zaeef*).² However, Allama Ibn Qayyim and Hafiz Ibn Hajar plead that both the last quoted narrations are correct and sound, and he discussed reasons for reluctance in this regard. In spite of opinions of these stalwarts as mentioned here there is another angle from which the issue of *Azl* may be seen. There is a chance that the reporting Companions might have missed to hear or groups the entire meaning of the Prophet's (peace be upon him) words. And, what he quoted, as from the Jews would have been considered by mistake as his own words. Because, it is proved from the narration of Abu Saeed Khudri that this statement is not that of the Prophet (peace be upon him), rather it is that of the Jews whose lie he had referred. There are several instances of misunderstanding the context of the statement and its preceding words.

For example, there is a narration of reverend companion Masrooq that the prayer would become void if a dog, donkey or woman passes by in front of a praying person. When reverend Aysha came to know about this statement she became angry and said:

"شبهتمونا بالحر والكلاب والله لقد رأيت النبي
صلى الله وسلم يصلي وأنا على السرير بينه وبين
القبلة مضطدعة فتبدو لي الحاجة فأكره أن أجلس
وأوذى النبي صلى الله عليه وسلم فأنسل من عند
رجليه".

¹ Muslim and Ahmad.

² Fath ul-Bari 9:248.

“You have equalised us (women) with dogs and donkeys. By God! I have seen the Prophet (peace be upon him) praying in such a position that I was lying on a platform in front of him just between Qibla and the praying Prophet (peace be upon him). When I would not inclined to keep lying further and while feeling the Prophet’s (peace be upon him) discomfort I used to slip near his feet”.¹

Moreover, such instances are also not available wherein the Prophet (peace be upon him) is condemning the thinking or practice of the Jews on the one hand and, on the other, approving the same. In such a case, the position adopted by reverend Umar in the case of Fatimah bint Qais may be a guiding one.²

It can be guessed from the above discussion that there is no proof available in the negation of Withdrawal, *Azl*. Contrarily, the practice of the reverend Companions, their Disciples and the Followers of the latter ones authenticate it.³ Hence, *Azl* could not be considered as something forbidden or near to forbidden (*Makruh tahrimi*) rather it must be considered permissible or at the most acceptable (*mubah*) as said by Imam Ghazali.

When *Azl* (Withdrawal) is considered permissible then all those similar contraceptive techniques would be taken as permissible, which have come into being as a result of scientific, progress in the modern age. This debate is not much fruitful that if the permission for the use of these contraceptives and anti-fertility techniques is given then what should be its objective. The motives for the use of *Azl* during the classical period were in the wake of contemporary situation, traditions, practices and orientations. Imam Ghazali has thrown some light as regards the

¹ Bukhari, the Book of Prayers.

² Muslim, the Book of Divorce.

³ Al-Mughni Of Ibn Qudama,7:23.

motives and reasons that were compelling for the adoption of *Azl* during his time.¹

Presently, the issue should be discussed from the contemporary point of view regarding conditions, environment, compulsions, etc., and the factors for the practice of temporary contraceptives should be understood in the light of wider context of present needs and requirements. Here, the economic, social, temporal, medical and other human interests should be included. Hence, it is a commonly known practice among the Jurists to change the injunctions of *Shariah* in the wake of change in the imperatives of the time.² The most important issue in this regard may be the economic one. Here, the permission to an individual should be separated from the directive for a state policy.

Several experts while quoting the verse "لا تقتلوا أولادكم خشية إملاق" declare economic motives as false and against the faith, however there is no obvious reason for the same.

Firstly, the condition of "fear of property" in the referred verse is accidental and not objectionable as such. The crux of the verse is that foeticide or baby killing is a grave crime, do not commit such an offense and that too due to fear of impoverishment. God provides provisions to all, therefore, do not fear of economic disadvantages or do not kill your offspring. There were several other motives for baby killing prevalent in the Arab society apart from the economic one specially for killing a she-baby and all of them were disregarded by Islam. Secondly, it is not correct from linguistic, customary practice, the *Shariah* and common sense to guess the secretions of sexual organs as offspring even before the fertilisation could take place in the uterus. Thirdly, the human efforts for enhancement of

¹ Ehyae Uloomiddin 2:52, Radd-e-Muhtar On Durri- Mukhtar P. 380.

² Fatawa Qazi Khan "إن خاف من الولد السوء في الحرة بسعه العزل بغير رضاها لفساد الزمان فليعتبر مثله من الأعذار ايضاً" P. 379.

livelihood is not against the faith on a Sustainer God, otherwise, various life sustaining endeavours would become target of such a negative thinking.

One man was willing to get married, however, he was unable to bear the expenses of keeping a family. The Prophet (peace be upon him) advised him to keep fast instead of getting married. This shows that economic motive is not against the faith on Allah, otherwise the Prophet (peace be upon him) would have given him permission for the marriage while living the burden of expenses on Allah. The injunction of the Prophet (peace be upon him). "تزوجوا الودود والولود فإنني مكاثر بكم الأمم يوم القيامة". "Marry those women who love you the most and who give you more children since I would feel proud of my *Ummah* than to others on the ground of its overriding number",¹ is also not refuting it because its position is simply that of inducement according to the consensus of Jurists and experts on *Ahadith* and that of elaboration of an injunction.

Thus, it is laudable that the Muslim *Ummah* should multiply, however, this desired and proud increase may also increase social responsibilities due to increased burden of educating and brought up of children for sound moral behaviour, religious accomplishment and spiritual advancement. And, this is related to the state policy and legislation on the one hand and, on the other, to individual compulsions and various requirements. The author feels that population control could not be made a national and governmental policy, however, individuals may be allowed to undertake birth control measures in certain circumstances. These circumstances may be as follows:

1. For suitable gape between two issues
2. For children's education and upbringing

¹ Abu Daud.

3. If the mother lacks capability to nurture her children
4. The mother is compelled to do work outside for livelihood and not just to raise life standards
5. Shortage of wealth and increased number of dependents.

If other motives of birth control are not invalid in themselves then the above listed reasons may also be considered for permission with a discouraging attitude. Hence, if a person seeks permission for contraceptive measures with a view to just keep his family smaller or with an aim to reduce his responsibilities in a household, could not be given permission in this regard.

Abortion

The more popular and more complex method of birth control remains the abortion. When conception has been reached upon in mother's womb then the situation entirely changes. Now, the third party appears in the scene apart from the partners of a conjugal life. Hence, the Islamic *Shariah* puts strict restrictions here; that means abortion is not allowed and it would be considered tantamount to foeticide. Some jurists have made time limitation as well while forbidding abortion whereby abortion would not be permitted after a certain period of development of child in the womb, however, before that permission might be given for it. Hence, Shami writes:

"هل يباح الإسقاط بعد الحمل؟ نعم يباح ما لم يتخلق منه شيء ولم يكن ذلك إلا بعد مائة وعشرين يوماً".
 "Is abortion permitted once the conception takes place? Yes, it is permitted up to the time something is produced there in and such a thing comes into existence only after 120 days?"¹

¹ Radd-e- Muhtar On Durri- Mukhtar P. 380.
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In Fatawa Qazi Khan,

"يباح إسقاط الولد قبل أربعة أشهر".

“Abortion of foetus is permissible up to four months.”¹

Some Jurists are against the abortion as such.² Those who permit abortion within four months of conception have various embryonic stages of the foetus in view and consider the issue from the angle of these stages.

The Qur’an explains various foetal stages in the womb in these words:

"ولقد خلقنا الإنسان من سلالة من طين، ثم جعلناه نطفة في قرار مكين، ثم خلقنا النطفة علقة فخلقنا العلقة مضغة فخلقنا المضغة عظماً فكسونا العظام لحماً ثم أنشأناه خلقاً آخر فتبارك الله أحسن الخالقين".

“Man We did create from a quintessence (of clay); then We placed him as (a drop of) sperm in a place of rest, firmly fixed; then We made the sperm into a clot of congealed blood; then of that clot We made a (foetus) lump; then We made out of that lump bones and clothed the bones with flesh; then We developed out of it another creature. So blessed be Allah, the best of Creator!”³

Here, the stages of human creation are as follows:

¹ *Ibid.*

² Muslim, the Book of Fate.

³ Surah Muminoon 12-14.

1. Semen 2. Clot 3. Lump 4. Development of bones and flesh

How much time is required for these stages? According to the narration of Abdullah bin Masood that the Messenger of God (peace be upon him) said:

“Creation of every one of you in womb takes forty days each for mixing, then you grow as clot, then as a leach like thing, then Allah sends an angel who blows spirit into it”.¹

From this statement it becomes obvious that a foetus becomes live or a cognisable human-self 120 days after the conception, that is after four months. However, according one report of Khadija all these stages take forty-two days only.² It is possible that this statement may be a brief one and its elaborated connection may be with the earlier referred one. Therefore, the Hanafi school of thought keeps four month’s period as a genuine period for the development of a foetus into a spirited being. On the basis of this only, the school allows abortion within four months once a conception lodges in the womb, and after that they deny any abortion. However, no unconditional or open permission may be given for the abortion in pre-spirit period in itself especially in the present time when there is apprehension of misuse of this blank permission.

That means even due to Islamically valid excuses and acceptable medical compulsions the same should not be permitted because it may lead to severe harm to society and the *Shariah* is also against it. This point of view may be understood in the case of Ghamdiya. She accepted four times before the Prophet (peace be upon him) regarding her committing fornication but the Prophet (peace be upon him) tried to ignore her self-confession. Then,

¹ Muslim, the Book of Qadr.

² *Ibid.*

she asserted that she had conceived as a consequence to her offense, and then he advised her to wait till the child takes birth. Then she came to him after the birth, on that, he advised her to wait till the suckling period is over. When she came once again after that period the Prophet (peace be upon him) handed over the baby to some one and punished her for her self-confessed offense.

In this episode, it is not clear whether Ghamdiya approached the Prophet (peace be upon him) before the four-month's period or after that. However, the common sense points that she had approached him within four months of the conception because a woman can easily feel about such a thing beyond any doubt and realisation of any offense is always instantly felt by sensitive human beings, like Ghamdiya. The Prophet (peace be upon him) educated and brought up his Companions in such a way that if by any chance they happened to commit any grave offense they instantly realised their mistake and worried for repentance. Therefore, it is not possible that she would have approached him after the period of four months.

The essence of the event in the present context is that in spite of her open acceptance of an offense she was not forth rightly punished by the Prophet (peace be upon him) and he postponed it till the birth took place and the suckling period was over because there was a question of life of one more human being growing inside her womb. Hence, he gave the new being a chance to survive.

The permission for abortion may be understood exactly in the same way. Those jurists who are out rightly against the abortion seem to be nearer to the spirit of Islam and those who are inclined to permit it derive their opinion on certain acceptable excuses.

Now, the question remains that a child growing inside a womb is deficient in some way or has some genetically inheritable ailment or may be invalid due to other reasons and when these factors are medically proved, then the abortion would be permissible or not? In these conditions the permission cannot be given after the period of four months and even during that a general permission should not be given. However, in exceptional cases abortion may be carried out during that period depending upon gravity of a situation. The general permission may lead to abortion in case of lamb excuses. This aspect is also worth consideration that on the basis of an uncertain harm right to life of a new being cannot be jeopardised. And in such condition as well no permission can be given when the parents feel that they do not need one more offspring even before or after the four-month's period of conception.

The same is true as regards the excuse that the mother is not able enough to rear a child or that she faced a rape against her will resulting into such a conception rearing of which would be some sort of mental torture to her. In such instances, once the four-month's period is over, it would be understood that the mother in question agrees to give birth to the developing foetus, hence, abortion would become impermissible. And, if the life of both the mother and the foetus are in danger then the life of mother would get precedence over that of her foetus since she is indispensable for her whole family.

If a general permission is given regarding the abortion then there is an apprehension that the parents would be inclined to keep boys and abort girls once the sex of a foetus is medically confirmed. This trend is already growing in our society. This would not only lead to alteration in the natural sex ratio but also to denigration of status of woman as such.

The following methods have been developed by the modern science and technology to detect foetal sex:

1. Amniocentesis
2. Foetal Copy
3. Ultrasound
4. X-Ray

Since, the role of a doctor would be very much in the application of these techniques, some of the experts and jurists put the condition of Muslim doctor for the consideration of permitted abortion. However, perhaps, it may lead to complexities in a country like India where, the dearth of Muslim doctors is very much apparent in several parts of the country. Hence, the Muslim patients have to depend upon non-Muslim doctors in the absence of a Muslim doctor. Allah knows better.

RELIGIOUS INSTRUCTIONS REGARDING ANTI- FERTILITY TECHNIQUES

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Temporary Birth Control: Some Justifiable Ways

The temporary birth control measures, e.g., condom, loop, pills, etc. may have scope of being used in the following conditions:

1. To create gape between two issues, so that each child may receive full maternal care. For instance, the first child is in the suckling period and if the mother becomes pregnant her milk would become harmful to the child leading to an innate deficiency and enervation in the psychological and physical strength of the growing baby:

"عن أسماء بنت يزيد قالت سمعت رسول الله صلى الله عليه وسلم يقول لا تقتلوا أولادكم سرّاً فإن الغيل يدرك الفارس فيدعثره عن فرسه".

“Reverend Asma bint Yazid narrates that the Messenger of God has stated: Do not inadvertently kill your offspring (by having intercourse with your pregnant wives) because (this is *ghila* and) the effect of *ghila* throws a rider from the horse back (due to acquired weakness).”¹

While commenting on this *Hadith* Mulla Ali Qari writes:

¹ Abu Dawood, Mishk'at 2: 276.

"توضيحه أن المرأة إذا جومت وحملت فسد لبنها
وإذا اغتذى به الطفل بقى سوء أثره بدنه وأفسد
مزاجه الخ".

“Coitus with a pregnant woman adversely affect the quality of her milk and when her infant sucks the milk then its harmful elements affects its body and it would acquire some sort of permanent deficiency as a consequence.”¹

Moreover, if there is no gape between the two children than the mother would not be in a position to do justice with any of them because her attention would be diverted to one or the other. And if the mother is not paying full attention to them then their health would certainly be affected and it may be that the deficiency and early childhood weakness might not be recovered in the later part of his entire life, as has been pointed out in the above mentioned *Hadith*.

2. The delivery is injurious for the physical and mental wellbeing of the mother and even it threatens her very life.² And, the danger is potential and there should be a strong apprehension in this regard, not just a casual feeling or doubt. It is there in Al-Ashbah wal-Nazair:

"مشقة خفيفة كأدنى وجع في اصبع وأدنى صداع
في الرأس أو سوء مزاج خفيف فهذا لا أثر له ولا
التفات إليه".

“So long as minor problems are concerned, for example, light pain in a finger or a moderate

¹ Mirq`at ul- Mafatih 3:443.

² Ehyae Uloomiddin 2:22.

headache or the illness of vagina, then there will be no affect of it and it would not be admissible.”¹

3. There is a strong feeling that the baby, developing in the womb, is suffering from a serious genetic or congenial ailment or mental retardation or stunted growth, etc. This is a case similar to the one in which defilement of *haml* would potentially lead to certain deficiency in children, in such cases some of the jurists have permitted *Azl*.

"رجل عزل عن امرأته بغير إذنها لما يخاف من
الولد السوء في هذا الزمان فظاهر جواب الكتاب أن
لا يسعه وذكر ههنا يسعه لسوء هذا الزمان كذا في
الكبرى".

“A person practiced *Azl* without the permission of his wife because at that time there was a fear that the new borns would not be properly brought up. It is obvious from the answer of the book that there is no scope for its permission whereas here there seems some relation because of the contemporary situation. It is mentioned in al-Kubra in the same way”.²

A similitude may also be found in the case, when a woman becomes disobedient and her husband resolves to divorce her and fears that if she were pregnant due to him then she would become more obstinate while thinking that now he would not divorce her considering the baby’s upbringing, in such a case the Jurists allow the husband to adopt *Azl* for avoiding this untoward pregnancy.³ Obviously, the ill-treatment of his wife would cause him much tension and mental torture and, similarly, the would-be-baby’s

¹ Al-Ashbah Wal- Nazair P.105.

² Alamghiri 4:112.

³ Qadir al-Fath, 2:294.

genetic or congenital ailment or deficiency, as predicted by an authentic expert, would lead to constant tension and burden for the parents. Hence, the temporary methods of deferring pregnancy would be permitted such as *Azl*.

Temporary Contraceptives: Some Impermissible Conditions

The under mentioned anti-pregnancy methods do not qualify for the juristic permission:

1. In case of economic consideration that each child would enjoy better future. This does not qualify as an excuse in the *Shariah* since the livelihood of each person lies in the hand of Allah hence such an aspiration does not get juristic approval for making use of temporary contraceptives, e.g. *Azl*, etc. This is an unnecessary burden man has put on himself.

"وما من دابة في الأرض إلا على الله رزقها".
"There is no creature on the earth but its sustenance dependeth on Allah".¹

"وكأين من دابة لا تحمل رزقها الله يرزقها وإياكم".
"How many are the creatures that carry not their own sustenance? It is Allah Who feeds (both) them and you".²

"قل إن الله يبسط الرزق لمن يشاء ويقدر ولكن أكثر الناس لا يعلمون".

¹ Qur'an: 11:6.

² Qur'an 29:60.

“Say: “Verily my Lord enlarges and restricts the Provision to whom He pleases, but most man know not”¹.

"من يتق الله يجعل له مخرجاً ويرزقه من حيث لا يحتسب".

“And, for those who fear Allah, He (ever) prepares a way out. And He provides for him from (sources) he never could expect.”²

"لا تقتلوا أولادكم خشية إملاق نحن نرزقها وإياكم".

“Kill not your children for fear of want; We shall provide, a sustenance for them as well as for you”³.

2. In case of the contemporary fashion of keeping smaller families under the influence of family planning movement, the concept of smaller family is not in tune with the spirit and environment of Islamic thinking:

"تزوجوا الودود الولود فإني مكاثر بكم الأمم".

“Marry those women who love you the most and who give you more children since I would feel proud of my *Ummah* than to others on the ground of its overriding number”⁴

Increase your progeny to enhance the growth of *Ummah*.⁵

¹ Qur'an 34:36.

² Qur'an 65:2-3.

³ Qur'an 17:31.

⁴ Abu Dawood, Nisae.

⁵ Mishkat 2: 267

"تناكحوا تناسلوا تكثروا فإني مكاتر بكم الأمم يوم
القيامة".

Marry, perpetuate the race and increase your population so that my *Ummah* should outnumber on the Day of Judgment.¹

Evidently, Islam generally prefers a larger family and not the smaller one.

3. In case of professional reasons for instance, a woman is inclined to sustain her career in service (and would prefer to postpone pregnancy for this reason). This thing is also not an excuse in the view of jurisprudence because service and earning is not the primary responsibility of a woman but it lies on her father till she becomes an adult and marries, on her husband till he survives and able to do so and on her progeny if she is a widow or on father, brothers and society as a whole if she does not have children or they are not yet grown up.

In essence, she has been totally freed from the burden of earning the livelihood for her family unless circumstances so require. The potential and innate responsibility of a woman is towards the management of her family and for the upbringing of the progeny. While harming the cause of her primary role, her preference to career should not be considered as a case for juristic exemption. However, if a woman is compelled to acquire some occupation and career due to difficulties and problems of her family then she might be exempted from this restriction, if her case is found convincing to the experts.

4. The maintenance of beauty may become an excuse only in such a case when a wife is afraid of some dire consequences from

¹ Fath al-Qadir 2:342.

her husband, that he may ignore her upkeep and deficiency in her beauty may increase his ill treatment and cold behaviour. It is a case similar to the earlier discussed one when a husband has been exempted to adopt *AzI* in the apprehension of increase in the rude treatment of his wife being pregnant. If this apprehension does not exist then the permission would not be given simply to preserve the beauty of a woman.

5. In case a woman is politically or socially very active and multiplicity of children may create an obstacle in her such activities, therefore, she would like to achieve her goal by using contraceptives. This is not permissible from the Islamic point of view. Since, these affairs are highly disapproved of if they are affecting her prime duty as a mother and she entangles herself in such activities at the cost of her responsibilities towards her family and upbringing of her children.

6. Even if a mother is not in a position to nurture her children well, due to mental disorder or due to physical ailment, still contraception is not allowed because the upbringing of children is actually the responsibility of father. Nevertheless, the family people have a soft corner for such a child or children and they themselves come forward to care such children if so required. Hence, this situation also does not qualify for permission if the father is also not capable enough to take care of his children.

7. This case is also not valid for the use of contraceptives that the would-be child is a girl, or a woman wishes to avoid pregnancy while keeping in view that she would have to bear the burden of rearing a child or that she would have to remain unclean and remain impure as a result of baby's excreta or urine, or have to bear the labour pain and fatal difficulties or the inconvenience of nursing her child.¹

¹ Ehyae Uloomiddin 2:22.

If any of the above-discussed conditions of the exemption occurs or justified then a Muslim doctor may advise for the temporary contraception. However, if unmarried persons approach him for his advice in this regard then he should not heed to their queries because they do not require such measures and advising them in that regard would involve various social evils and aspects of moral degradation. There is an apprehension that it would open a floodgate of fornication. However, a Muslim doctor in affirmation may advise those clients who are shortly going to marry.

A Muslim doctor can advise his non-Muslim clients in this regard even though the situation of permitted exemption may not exist. It is in the light of this verse:

"إِنَّكَ إِن تَذَرَهُمْ يَضِلُّوا عِبَادَكَ وَلَا يَلِدُوا إِلَّا فَاجِرًا أَوْ كَفَّارًا".

"For, if Thou dost leave (any of) them, they will but mislead Thy devotees, and they will breed none but wicked ungrateful ones."¹

Moreover, it is the existing *Ummah* which is persuaded to enhance its numerical strength and not that one who is yet to be invited to Islam, as is said:

"فَإِنِّي مَكَاثِرُ بِكُمْ الْأُمَّمَ"²
"So that you may enhance the *Ummah*."

It is so that the *Ummah* may be enhanced in numerical strength.

Abortion: Permissible Conditions

¹ Qur'an 71: 27.

² Abu Dawood, Nisae.

Within the pre-soul phase from the day of conception up to 120 days, abortion is permissible if the following exemptive conditions do exist:

1. The apprehension of any chronic disease or danger of mental and physical illness affecting the woman.
2. There is an inborn deficiency in the foetus and it is strongly presumed that the baby would be mentally and physically imbalanced.
3. The child is likely to have a fatal inheritable disease.
4. It is strongly felt, in the light of suitable medical tests, that the child would be highly imbalanced or suffering from some basic developmental deficiency leading to unbearable and constant tension for him and his parents, his life would become miserable and he would be a victim of severe genetic disease.
5. The conception came into existence as a result of rape. Maulana Abdul Hai Firangimahali wrote this in the commentary of Hidayah:

"قوله لم يجز إسقاطه أي بالمعالجة وهذا إذا استبان خلقه وإن كان غير مستبين الخلق يجوز أما في زماننا يجوز وإن استبان الخلق وعليه الفتوى".
"The author states that its abortion is not permissible, that means, abortion by means of treatment and in the situation when the existence of out come (Foetus) becomes evident."¹

¹ Margin Note 9, Hidayah 2:292.

Abortion: Non-Permissible Conditions

1. The unwillingness of parents to have children is not an excuse for abortion; therefore, in this situation it is forbidden.
2. The pregnancy of the woman, who is not in a position to take care of her child due to mental or physical deficiency, would not be clinically terminated because that care is actually the prime responsibility of father and not that of the mother or other members of the family may likely take care of the baby. This has been commonly seen in our society.
3. When the post-conception medical investigation confirms that the would-be baby is a girl, in this situation abortion would not be permitted, although it may be done even within the first phase of 120 days from the day of conception. It is because it would be considered tantamount to burying she-babies alive as was prevalent in the pre-Islamic Arabia.

"وإذا الموءودة سئلت بأي ذنب قتلت".

“When the female (infant), buried alive, is questioned....for what crime she was killed.”

Permanent Measures of Birth Control

It is an offense to permanently harm the procreative abilities of man or woman through surgical operation and it is equivalent to castration of humankind, whereas castration of Adam’s progeny is *Haram*, i.e. forbidden¹, as is expressed in the axiom "اختصاء بني آدم حرام" "Castration of sons of Adam is prohibited."² This is also a devilish conspiracy because it amounts to “Change in the Creation”

¹ Fatawa Alamgiri 4: 338, Fatawa Qazi Khan 4: 369.

² Fatawa Alamgiri 4:338, Fatawa Qazi Khan 4:369.

"ولأمرنهم فليبتكن آذان الأنعام ولأمرنهم فليغيرن خلق الله". And, it is contrary to the Prophet's injunction (peace be upon him) that "Increase as much of your progeny as possible".

Hence, there is not an iota of doubt regarding its being forbidden.

Nevertheless, the author considers one situation of woman's operation in this regard, which makes a forbidden thing odious (*Makruh*) due to compelling circumstances and the rule of Necessity becomes true. "الضرورات تبيح المحظورات"¹

For instance, there is a woman whose clearing of foetus or abortion, both are, presumably very much fatal or her delivery completes only due to caesarean operation and three such operations have already been carried out and the fourth one would be dangerous for her life as confirmed by a competent doctor, then the exemption of anti-pregnancy operation in such a case is understandable and, therefore, allowed.

In spite of contraception, there is a chance of conception, as it some time happens, for example, the condom bursts during an intercourse, or the suppidileries become ineffective, and *Azl*, which is a similitude of these devices, may not prevent pregnancy absolutely as has been expressed in several *Ahadith*. Hence, it is evident that if such a woman is permitted to adopt temporary measures of birth control and, the conception even then takes place, then her life would be in an utter danger. The author thinks that in such cases the application of "Necessity", (*zarurat*), becomes true and the rule that "الضرورات تبيح المحظورات" "Necessity makes non-permissible permissible." Would become applicable and the permission for permanent measures would become valid.

¹ Al- Ashbah wal- Nazair P- 108.

The Issue of Birth Control

Mufti Azizur Rahman
Darul Uloom Imdadia, Mumbai

The knowledgeable are well aware of the opinion of experts on Jurisprudence regarding pregnancy check, birth control, abortion and family planning, and, so long as the author knows most of, rather almost all of them, have deep thinking and learned *ulema* have an opinion which does not favour this aspect of modern developments. Indeed, this unbecoming view emerges amidst the fear that if the population growth remains unabated then a day will come when the available resources for sustaining mankind would be insufficient for its continuity. Consequently, the human beings would face draught and famine and people would die of starvation. The author thinks, at the outset, that this very concept is blasphemous, whereas Islam assures of the sustaining power of Almighty God. The Qur'an explicitly makes it known that:

"وما من دابة في الأرض إلا على الله رزقها"

“There is no living creature on the earth whose sustenance is not on Allah.”

Again this is wrong to think that if we fail to control the population then it would increase up to a fatal level. Such thinking is nothing but a product of deficient study of nature and its innate laws. Had it been so, the problem of animals would have become critically dangerous by now. They do not opt for anti-fertility operations still their growth is never seen to an alarming level, the way we think in case of human society. It may be said that human beings are consuming animals so their population does not grow beyond a certain limit. So, I would like to give the example of two animals, which are not generally eaten by man, being impure, i.e. dog and swine. Perhaps, there is hardly any community (except the

Chinese) who eats dogs and the pork eaters are mainly found in the western countries and their number in other parts of the world is rather insignificant. By coincidence, both animals have more than normal power of reproduction. In spite of this, the nature has all control over their population. This reveals that natural laws are operative in their own ways. And, the Creator of universe knows well His own creation and its needs. He is overpowering all the things, and rules on every thing and His laws also keep human interest in the sight and, similar to that of animals, He would not allow the growth of human population beyond a certain limit. Secondly, there is a concern for sustainable resources that are presently exposed to man, which help in the solution of contemporary problems. Two decades back, the production of 1-2 quintal of cereals per unit of land was considered satisfactory and now in the same fields the production has increased manifold.

Furthermore, the Qur'an has explicitly refused this sort of views as a genuine thinking in these words:

"لا تقتلوا أولادكم خشية إملاق."

“Do not kill your children, fearing loss of wealth.”

This verse is in itself a complete and clear code of conduct. Here, some experts would be found saying that this verse forbids extermination of children whereas vasectomy and population control cannot be said as killing from any angle. The murder is an act, which severs the relation of life from a living being whereas in the present case life of no living being is involved by which it may be understood as the case of murder. It is understood that this is also an aberration or misunderstanding of such people. The first thing is that one form of genocide is termed in Islamic lexicon as *vad*, i.e. burying some one alive, the way in which the girl children were buried by the Arabs in the pre-Islamic days. The Qur'an condemns this tradition in these words:

"وإذا المؤودت سئلت بأي ذنب قتلت".

"Then she will be asked, "For what you were killed"?"

Obviously, the Islamic understanding of the tradition has been that it is a murder, *qatal*. And, with this the *Hadith* in which the Prophet (peace be upon him) termed *Azl* (Withdrawal) as *vad khafi*, i.e. a micro level of burying some one alive. Therefore, there is no way then to accept vasectomy, etc. as some sort of genocide, may be of minor nature. Moreover, the Qur'an points out that "fear of property" is the motive of this murderous approach and forbade it especially on the basis of this motive, otherwise, genocide is already prohibited. The same objective is also present here, i.e. there is a fear of dearth of individual or global resources due to the growth of human race. And, if this motive is declared condemnable then the way adopted for this will also become so although one may not accept it as genocide. The aspect of evil design to promote Change of Creation is also there, which is present here to a great extent and the interpretation of *Hadith* that "تزوجوا الودود" "Marry a woman who love you most and who give you more children" is also against it.

Hence, the surgical operation intended for permanently depriving man of its reproductive capability is not proper. However, the contraceptives leading to temporary impact on the reproductive processes may be conditionally exempted. But, in this regard too, the fashion of keeping a smaller family, cosmetic motives and the longing merely for economic prosperity are not the acceptable excuses in the *Shariah*.

It may be reasonable to think that the medical grounds for birth control are among the acceptable excuses in this context. Those factors, which are strongly related with the health of mother or her child, comprise without doubt acceptable excuses in the Islamic *Shariah*. The upbringing is connected with economic status of the

family and if some better alternate is available then the situation may change, otherwise the same would also be acceptable as a valid reason to permit contraception to certain individuals.

Since, the injunction has a general bearing, hence, it is not proper to distinguish patients on the basis of their faith, i.e. whether they are Muslims or not. The hereditary reason is found fatal for the family, hence, the experts should better advise in such cases affirmatively for birth control.

Abortion as such is prohibited. However, in some exceptional cases if the situation so arises then it may be permitted only up to the pre-spirit stage, i.e. within 120 days from the conception. The forced rape is purely a social issue and it is having bearing on the future of a woman, therefore, it may also be considered as a valid excuse.

Family Planning

Maulana Abdul Jalil Chaudhari
Amir-e-Shariat, Assam

The programme of family planning has three different aspects, firstly, exponential growth of human population as compared to the presumably limited sustainability of the earth; secondly, elevation of life standards by applying birth control techniques; and lastly, consideration of health and wholesomeness of women.

On the basis of these above said motives on which the entire issue of family planning lays the foundation of its complete scheme, and if the twin sources of Islam, the Qur'an and *Sunnah*, accept these motives then the scheme of family planning would become valid otherwise it should be regarded as unacceptable for the Muslims.

If the very first basis of family planning, i.e. consideration of limited resources available to a family or to the entire mankind is examined in the wake of Qur'anic injunctions, then it is found that this motive of birth control is totally disregarded by the Holy Book. It is commanded by Allah the Almighty:

"وجعلنا لكم فيها معاش ومن لستم له برازقين وان
من شئ الا عندنا خزائنه وما ننزله الا بقدر
معلوم".

"And, We provided therein means of living for you and for those whom you provide not. And, there is not a thing but with Us are stores thereof and We send it not down except in a known measure."¹

And, He said on other place:

"لا تقتلوا أولادكم خشية إملاق نحن نرزقهم وإياكم
ان قتلهم كان خطأ كبيراً".

"Do not kill your children due to fear of wealth. We feed them and We feed you. If you kill them it will be a great offense."

And, He said in third place:

"وما من دابة في الأرض إلا على الله رزقها "

"There are various animals on the earth the provision of which is on Allah."

In the first verse, it has been axiomatically pointed out by Allah the Almighty that He has bestowed for human beings and, of course, for all other creatures, provision without bounds and He possesses the unending treasure of every thing with Him. However, He exposes His bounties in a restricted and measured way and provides the provision to each creature in a limited and measurable quantity.

In the second verse, Allah prohibits man to kill his progeny with the fear of impoverishment and hardships of life. It is He Who provides provisions for both descendents and predecessors. It has been explicitly informed that it is a severe offense to exterminate one's own children with the fear of poverty and limited resources.

And, in the third verse, it has been made plain and evident that all the moving animals on the earth find their provision from Allah only.

Since, God is the First and the Last, He assures mankind by revealing these verses that man should not worry about resources in the wake of growth of human population. The scheme of family planning made these verses understandable now that a day would

come when some whimsical people are likely to kill their progeny just guessing that the sustainable resources are limited.

This becomes extremely evident from the above-referred verses that each member of a family brings along his own food and none else is responsible for the same. And, from the interpretation of relevant *Ahadith* it becomes even clearer that the expansion of family does not cause any effect on the provisions of family, rather, it enhances the same. Hence, it has been commanded by the Prophet (peace be upon him) that: "التمسوا الرزق بالنكاح" "Search you provision by marrying".

"بيت لا صبيان فيه لا بركة فيه".
"A house devoid of children is devoid of *barkah*".

Furthermore, the Prophet (peace be upon him) has encouraged people to have more children. He said:

"تزوجوا الودود الولود فاني أباهي بكم الأمم".
"Marry a woman who can love you most and who can give you more children..."

He has condemned the unmarried life, when it was found justified on the basis of fear of children. He stated:

"من ترك الزواج مخافة العيال فليس منا".
"Who kept away from the marriage due to fear of children, is not from us".

The idea of family planning emanating from the fear of provision is baseless, unfounded and merely a global schizophrenia because it is a common observation that with the growth of human population the world is moving towards prosperity and progress.

If the programme of family planning were executed with the view that natural resources are limited then it would be desired to kill the surplus population in case such resources are destroyed due to some calamity in a country. Similarly, if the family of five persons, with two parents and three children, fails to acquire enough income then it would require a planning to kill some of them to relate the number of family with its income. Hence, the problem of limitation of livelihood would be related to the family planning only but some times to killing of surplus people would be deemed appropriate for this purpose.

So long as the second motive of family planning is concerned, i.e. consideration for the life standards of the family, the first thing that is to be cleared is whether the jargon “standard of life” has some explicit connotation or not and, that, whether it is the same in case of various people in various times? Obviously, this is not the fact, rather, it is an additional reality. Its parameters have been changing with the change of time; every family strives to elevate its standard while thinking that its present status is not satisfactory. Hence, there is no specific highest limit to the standard of life and if there is no evident goal in this regard, then how another thing should base on it?

Moreover, this is simply a conjecture that the multiplicity of children is a hurdle in the way of proper education and upbringing of the progeny because there has been the observation and history renders evidence that culture, moral and behavioural training and education do not entirely depend on the availability of money in any era, rather, a conducive environment is basically required for the same. Several wealthy persons do not attain any significant education in spite of spending good amount of their wealth whereas a lot of children belonging to indigent and destitute families make remarkable contribution in academic and literary fields just because of their gifted potential and fervent endeavours in this regard, to the extent that, the whole nation would feel proud of them.

The third motive of family planning worth consideration is that if the health of a woman could hardly bear the problems and pains of pregnancy any more and an expert physician also expresses his consent on this realisation then the doctor may individually advise such a woman to adopt appropriate techniques to avoid pregnancy in order to preserve her health and save the life from a future crisis. However, this is only an individual sanction and does not qualify for a comprehensive social campaign in any part of the world. It is because the health reasons do vary from person to person, there might be a woman who is unable to bear the burden of even a single issue whereas there may be a woman whose health does not deteriorate even after several deliveries.

So far as the context and basis of family planning has been discussed. Now, its scope and relevant injunctions are presented for consideration. If birth control is acquired by means of injection, application of drugs, operations, etc., while keeping the sexual ability of a man intact, and without devastating his ability to produce semen or by removal of none of the essential reproductive organs of a woman or by installation of any pouch, etc. inside her body or by any other means to destroy her ability to become pregnant then this situation would be deemed tantamount to castration, *khasi*, which is prohibited altogether.

However, if the situation is such that by means of medicines, injection or devices the contact of sperms and ovum is prevented for some time only, then it would be deemed under the injunction of *tabtal*. Imam Bukhari declares in his famous compilation of *Ahadith*, that both the castration and *tabtal* are abominable and unpermitted, while creating a chapter of Bukhari Sharif on the subject:

باب ما يكون من التبتل والخصاء بسنده عن "
سعد بن ابي وقاص رد رسول الله صلى الله عليه

وسلم على عثمان بن مظعون التبتل ولو أذن له
لاختصينا".

“The chapter of Tabattul and Khasa - It is reported by reverend Saad bin Abi Waqqas that the Messenger of Allah (peace be upon him) has not permitted castration to Ali Uthman bin Mazoon”.

From this *Hadith*, the Imam has derived the negation of both castration and *tabtal*.

And, if the situation is of the sort that the pregnancy is terminated by abortion without considering that whether the foetus has acquired the spirit or not then in the juristic language this is considered as *Haram*, i.e. prohibited, rather it would be deemed equal to murder of a person which the Qur'an has sternly warned. If the foetus has grown to the extent that it has developed all the organs and has acquired a definite shape, then in that case the blood-money, *diyyat*, would become due on such an abortion. The details on this issue may be found in the juristic books under the heading of *Jenin* (Foetuses).

Those who are in favour of giving permission for birth control harness support from the *Ahadith* on *Azl*.

Because, when a companion of the Prophet (peace be upon him) sought from him the permission for *Azl* then he responded in these words:

"أعزل عنها إن شئت فانه سيأتيها ما قدر لها".
“You can practice with her *Azl* if you so wish, but whatever that has been destine will happen.”

This shows his dislike and the guess is that he made this statement unwillingly. Its similitude may be found in the instance that a son has asked his father for such a thing which is not approved of by

him, then he replied that you do it or not it depends upon you, but surely you will not be able to achieve your goal. This clearly shows that he has not given permission to the son, rather, instead of plainly refusing him, he responded in such a way, which would dissuade the son from his desired action.

This is the meaning and interpretation of the above-referred *Hadith*. In another *Hadith* the Prophet (peace be upon him) has explicitly forbade *Azl*. He commanded:

"سئل النبي صلى الله عليه وسلم عن العزل فقال: لا عليكم أن لا تفعلوا ذاكم فإنما هو القدر".

“When the Messenger of Allah (peace be upon him) was asked about the Withdrawal he said: What harm it is going to inflict upon you if you do not do so. The actual thing is what is destined for you”.

In the presence of the above-mentioned strong proofs and justification in favour of prohibition of birth control, the exemption of individual cases, for adopting *Azl*, does not give sanction to a public policy and national agenda of any country.

Islam and the Issue of Birth Control

Maulana Sultan Ahmad Islahi
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Among various day-to-day social issues, the issue of techniques used for the prevention of conception has always remained important. Its importance has further more augmented due to progress made in the present time in the field of medical sciences. In the present article, it has been attempted to study this issue in the light of Islamic viewpoint. As the life has become victim of imbalances in various human affairs, the attitude of man pertaining to the use of contraceptives is also equally imbalanced and full of prejudices. Consequently, the European society is demonstrating pleasure over the invention of effective contraceptives which have relieved man of various problems arising due to offspring while providing him a vast arena of fearless and harmless sexual pleasure. This is the out come of this phenomenon only that the growth rate of population has tremendously gone down in Europe. The natural imperative of rearing children is now being fulfilled by importing and adopting children from India and other third world countries.¹

Islam, being the religion of God, provides a balanced and suitable solution for this problem as it does in other walks of life. It allows adoption of suitable contraceptive techniques in certain circumstances out of necessity and where there is no human benefit involved in it then it highly discourages the same and persuade people to remain far away from using such means.

¹ Dawat Weekly, New Delhi, 1-12-1986.

The Classical Model

In the classical age of Islam there was only one technique in practice for prevention of conception and that was the Withdrawal or *coitus interruptus*, i.e. *Azl* that means to eject seminal fluid outside vagina just by the fag end of orgasm.

In this regard, there is a narration in the Bukhari in which Abdullah bin Jabir states:

"كنا نعزل والقرآن ينزل"
"We practiced Withdrawal while the Qur'an was being revealed."¹

His another narration in the Bukhari also records:

"كنا نعزل على عهد النبي صلى الله عليه وسلم والقرآن ينزل"
"We had the practice of Withdrawal in the period when the Prophet of Allah (peace be upon him) was among us and the Qur'an was being revealed."²

Its further explanation has been given by its one of the narrators Sufyan bin Aiyana as:

"لو كان شيئاً ينهاه عنه لنهانا عنه القرآن"
"Had it been something forbidden, the Qur'an would have certainly forbidden us in this regard."³

¹ Bukhari Vol. 2, the Book of Marriage, Chapter Azl, Muslim Vol. 4, the Book of Marriage, chapter Azl.

² Bukhari, *Ibid.*

³ Muslim Vol. 4, the Book of Marriage, Chapter the Orders of Azl.

In the above mentioned statement of Ibn Jabir there is further reference to the issue that:

"كنا نعزل على عهد رسول الله صلى الله عليه وسلم فبلغ ذلك نبي الله صلى الله عليه وسلم فلم ينهانا"

"In the Prophet's time, we used to adopt Withdrawal and its information reached to him but he never prevented us from this practice".¹

All these reports are evident as regards the issue of *Azl* (*coitus interruptus*) as a contraceptive technique. The same thing becomes explicit in another narration of Abu Saeed Khudri in these words:

"إن رجلاً قال: يا رسول الله إن لي جارية وأنا أعزل عنها وأنا أكره أن تحمل وأنا أريد ما يريد الرجال وأن اليهود تحدث أن العزل مؤدة الصغرى قال كذبت يهود ولو أراد الله أن يخلقه ما استطعت أن تصرفه"

"One person stated to the Prophet: "O! the Messenger of Allah (peace be upon him). I have a maid and I used to practice Withdrawal (during intercourse with her). I do not like that she should become pregnant, however, I fulfill such of my need which men do from women. Whereas, the Jews are of the opinion that *Azl* is a minor instance of burial of something live. The Prophet said: "The Jews are liars. If Allah so wills to give birth to some one there is none preventing him."²

¹ Muslim, *Ibid*.

² Abu Dawood, Vol. 1, the Book of Marriage, chapter "باب ما جاء في العزل"

Contrarily, there are certain *Ahadith* having hints of its forbidden nature. In the Muslim there is a sound narration against it. On one occasion when the Prophet (peace be upon him) was asked about *Azl*, he said:

"ذلك الوأد الخفي"

"This is a sort of minor offense of live burial of children."¹

In some of other narrations, it had been sensed that the Prophet (peace be upon him) was not favouring *Azl*. Abu Saeed Khudri reports in his one of the narrations that:

"سئل النبي صلى الله عليه وسلم عن العزل فقال لا

عليكم أن لا تفعلوا ذاكم فإنما هو القدر."

"What harm it would cause if you do not practice it?
The real thing is only the destiny and fate."²

Muhammad bin Sireen says that the words "What harm would it cause to you if you do not do so?" are nearer to prevention.³ "قوله لا عليكم أقرب إلى النهي"

There is another narration of Abu Saeed Khudri reported in Muslim in the following words:

"قال ذكر العزل عند النبي صلى الله عليه وسلم

فقال وماذا كم قالوا الرجل تكون له المرأة ترضع

فيصيب منها ويكره أن تحمل منه والرجل تكون له

¹ Sahih ul-Muslim, Vol. 4, the Book of Marriage, chapter "باب جواز الغيلة وكراهة العزل".

² *Ibid*, chapter "باب حكم العزل".

³ *Ibid*.

الأمة فيصيب منها ويكره أن تحمل منه قال فلا
عليكم أن لا تفعلوا اذا كم فإنما هو القدر "

“When the matter of Withdrawal (*AzI*) was referred to the Prophet (peace be upon him) he asked for further details. People said: “A man has a wife who breast-feed milk to a baby. Through her, he fulfills his sexual desire but does not like that she should conceive (in the suckling period). In the same way a man have bought a maid then he satisfies his urges through her but does not like that she should conceive”. Then the Prophet remarked, “If you do not do so then what harm is there? Real thing is the fate and destiny”.¹

Ibn Awun is one of the narrators in this connection who says that when this *Hadith* was referred to Hasan Basri then he remarked:

"والله لكان هذا زجراً"

By God! Warning is dominant in this.²

Justification for Withdrawal

Imam Ghazali declared this (*AzI*) permissible after thoroughly dealing with all the relevant statements on the issue and critically examining various opinions of Jurists, in these words:

"والصحيح عندنا أن ذلك مباح"

“To us the right approach should be to consider it allowable (*mubah*).”³

¹ Muslim, Vol4 the Book of Marriage, chapter "باب حكم العزل".

² *Ibid*.

³ Ehyae Uloomiddin 2:51.

Those statements which point out the non-permissibility and negation of Withdrawal and on the basis of which one school of Jurists considers it odious (*Makruh*) while deducing so, on the basis of the principle of renunciation of a worse thing, (*ahwanul baliyatain*) while further substantiating his point of view, by various proofs and arguments, he says in addition:

"وليس هذا كالإجهاض والوآء، لأن ذلك جناية على
موجود حاصل".

“This is not tantamount to killing of a child and live burial of an offspring. This is because committing such an offense would be possible only when it is done against something live and actual.”¹

He finally supports his view by referring one example:

"وكيف ما كان فماء المرأة ركن في الإنعقاد فيجرى
الماء أن مجرى الإيجاب والقبول في الوجود
الحكمي في العقود، فمن أوجب ثم رجع قبل القبول
لا يكون جانباً على العقد بالنقض والنسخ".

“Whatever be the matter, this is true that the secretion of a woman is also one essential factor for conception. In this case the position of different secretions of man and woman would be like that of proposing and consent in the matter of marriage and other worldly affairs. So, if one person while on saddle, proposes and withdraws his proposal before its acceptance by the proposee then he cannot be made responsible for breaking and terminating a nuptial bond.”²

¹ *Ibid.*

² *Ibid.*

One of the explanation of the verse, "نساءكم حرث لكم" "your wives are a tilth for you"¹ has been thus made:

"قوله (نساءكم حرث لكم) قال كيف شئت إن شئت

عزلاً أو غير عزل"

"Allah has said that you can approach (to them) in whatever way you like, either by practicing Withdrawal or not."²

One school of jurists considers *Azl* as a reprehensive (*Makruh*) practice. The statements of its rejection are from such Companions of the Prophet as Umar bin Khattab, Ali bin Abu Talib, Abdullah bin Umar and Abdullah bin Masood. It has also been reported from Abu Bakr. The reason propounded for this is that it affects the population growth which is one of the objective (of marriage) in Islam and it deprives wife of the desired orgasmic pleasure whereas the Prophet had encouraged to acquire proper means to increase one's race.³

However, its permission is still given because of certain necessity and the Necessity has been defined in Jurisprudence in a broad spectrum. Hence, the stern requirement in the classical age to prevent conception of a slave maid was on the apprehension of the social status of the offspring and for preventing her from conception with a wish to sell her after sometime. Hence, it has been reported that Hazrat Ali used to practice *Azl* with his slave maid. Moreover, it has been discouraged to practice *Azl* without any real purpose but it is not forbidden. One of the necessities of *Azl*, pointed out and having relevance to countries like India is that if a man feels an urge to have an intercourse with his wife in a hostile environment for the Muslims and thinks that the birth of a child or multiplicity of

¹ Qur'an 2: 223.

² Ahkam ul-Qura'an of Jassas 10:416.

³ Al-Mughni for Ibn Qudama 7:23.

offspring would create some problems then he can prevent the wife from acquiring conception.¹ Apart from general animosity, the chaotic and rampant situation in a particular time has also been considered as a reason for the permission of *Azl*.²

Hence, due to contemporary corruption and chaos a man cannot succeed in dealing various issues related to multiplicity of children and there is an apprehension that the children would not be brought up well then *Azl* could be practiced with wife even without fulfilling the condition of the “consent of free woman” in this regard by which it is required that the properly married wife’s consent for *Azl* is necessary for its practice by the husband.³

Some of the Companions of the Prophet (*Sahaba*) and their immediate disciples (*Tabain*) have been reported permitting *Azl* without imposing any condition for its necessity or otherwise. These are Ali, Sa’ad bin Abi Waqqas, Ubai bin Ka’ab, Zaid bin Thabit, Jabir, Abdullah bin Abbas, Hasan bin Ali, Zana bin Al-Arat, (all Companions), Saeed bin Musaiyib, Taus, Ata, Imam Nakhee, Imam Malik, Imam Shafai and Imam Abu Hanifa (disciples of the Companions) who belongs to this school of thought.⁴

Ibn Qudamah Hanbali did not mention in this list the name of Imam Hanble, however, the staunch jurists in the camp, Imam Ibn Taimiya states that all the four most popular jurists (*imams*) allow *Azl* with the condition of the consent of wife although several jurists declares it *Haram*, i.e. forbidden.⁵ This general view already exists that Withdrawal cannot be permitted if the consent of free woman, i.e. the wife, is not available. However,

¹ Al-Durri ul-Mukhtar with Rad ul-Muhtar 2:522

² Radd ul-Muhtar with Durri-Mukhtar 2:522.

³ *Ibid*, 2:521.

⁴ Al-Mughni for Ibn Qudama 7:23.

⁵ Fatawa Ibn Taimiya 32:108.

it may be allowed even without permission of a female partner in case of a slave maid. In this regard the statement of Hazrat Umar has been narrated by Imam Ahmad and Imam Ibn Majah as:

"نهى رسول الله صلى الله عليه وسلم أن يعزل عن
الحرّة إلا بإذنّها".

“Prophet (peace be upon him) forbade *Azl* with a free woman without her permission.”¹

Its reason being that it is a right of a free woman to fully enjoy the pleasure of intercourse, but this right is not accorded to a slave maid. However, it is also stated that if a slave maid becomes wife of someone due to proper marriage or birth of a child of her master then she also assumes this right. This judgement is based on the fact that normally the woman reaches to an orgasm a bit after her male partner and, hence, in the etiquette of intercourse it has been included by the *Shariah* that man should remain as such just after his climax so that his partner should also enjoy her share.²

Motives of Withdrawal

In spite of the general motives of *Azl* (as explained above),³ as obtained in the classical age of Islam, there might be some other motives for the use of this technique to prevent conception although renunciation of these motives may receive appreciation in the *Shariah* but Imam Ghazali explicates that these motives may not be considered as forbidden or disallowed ones.⁴

¹ Al-Mughni 7:24, Fath ul-Bari 9:247.

² Ehyae Uloomiddin 2:50.

³ Bukhari Vol. 2, the Book of Marriage, chapter "باب العزل", Muslim Vol. the Book of Marriage, chapter "لا الا حكم العزل", Abu Dawood Vol. 1, the Book of Marriage, chapter "باب ما جاء في العزل".

⁴ Ehyae Uloomiddin 2:52.

There is a vastness in these permanent and timeless motives of *Azl*:

1. The husband intends to preserve the beauty and health of his wife so that he could enjoy her company for a longer period or due to the apprehension that her ill health would hardly bear the birth of a baby and that her life might be in jeopardy. The Imam states that this motive of *Azl* cannot be considered denied and disallowed.

2. Similarly, if a man feels that the birth of new child would increase hardships in his family and he would be compelled to work harder than earlier or compelled to adopt wrong means of earning then he is allowed to adopt this technique if he so wishes. It is because if a man faces less problems he could find more time to discharge his religious responsibilities with excellence and perfection and the better course is the one in which Allah is fully trusted and affairs are left to him only whereas Allah Himself has stated that:

"وما من دابة في الأرض إلا على الله رزقها".

“There is no moving creature on the earth whose provision is not due with Allah.”¹

Modern Contraceptive Techniques

In the former periods Withdrawal (*coitus interruptus*) was the only technique practiced by people to prevent conception, as has been discussed above, in which the semen was disallowed to be ejected inside the female partner. In the modern time, the progress of science and technology has brought into the use of various even more improved techniques due to sophisticated devices, surgery or medicines; the use of these new

¹ Qur'an 11:6.

contraceptive methods has tremendously increased today. Both in the West and the East, these techniques have come in vogue with the only difference of degree of their use. Separate departments now exist in hospitals and dispensaries for this purpose. The governments are using mass media to vigorously popularise these techniques in society and promotes their use by men. Today, three kinds of measures are being popularised in India, i.e. condom, Copper-T and oral pills. Other modern techniques may be guessed on the basis of these three measures.

The use of condom is very similar to the technique of *Az/* (Withdrawal). The extraordinary interest of the government has brought out a very high quality of condoms made up of a very thin rubber sack, which is easily available nowadays. This some sort of balloon may be wrapped on the erect male organ in the way some one put on socks in feet or gloves in hands. Since the semen of male is dropped and collected in this rubber sack and does not pass inside the female partner, 99 per cent chances of conception are vanished. Condom has been proved an easily usable and cheap contraceptive today. One fourth of the couples in countries like the America use this measure to defer pregnancy whereas its average use in Britain is even more. In India too this is the most sold contraceptive today.¹

Apart from it being a simple and low cost contraceptive, the condom has been found useful for the patients of swift fall because it reduces friction on the male organ and thereby increases the stamina of the user. However, there are other shortcomings of this method. Since, a condom prevents direct contact of sexual parts of the partners it greatly reduces the natural pleasure during intercourse. Moreover, it is not suitable for psychologically weak and sexually less powered people because it may make its users permanently impotent.²

¹ Modern Birth Control, Hakim Khan Page. 57-59, New Delhi

² *Ibid*, P. 63

The use of oral pills is even easier than condom as a technique for deferring pregnancy, but its harms are comparatively more due to side effects. Firstly, its use is costlier. The pills are taken from the fifth day of menstruation onwards and one tablet per day is taken early morning for about 20 days. If it is missed even for one day then its results and effectiveness becomes doubtful. The average cost of each pill is Re. 1. Hence the total cost would be Rs. 20, per month for a woman. Moreover, its side effects are very harmful for the user. Some of the recent researches have revealed that there is a close relation between intake of oral pills and heart diseases. Moreover, its use induces cholesterol deposition in blood to a dangerous and fatal extent.¹

Copper-T is an advanced form of contraceptives, installed by a doctor inside female parts. It is also called as loop. It causes continuous hindrance in the movement of semen when it passes inside woman's body. This technique is very useful from various angles. It does not affect the pleasure enjoyed by the coupling partners, although it affects menstruation cycle to some extent and a woman has to take some precaution in household works. Seeing its form and utility this is an advanced technique over the classical method of Withdrawal, i. e. *coitus interruptus*.

One almost similar contraceptive is called douching in which the female partner cleanses vaginal path by various methods to prevent sperms to make any contact with the ovum.

All these temporary methods for deferring pregnancy would be covered under the juridical decrees about *Azl*. For those jurists, who think *Azl* as an odious practice (*Makruh*), these new techniques would be considered as acceptable. Those who feel that it can be allowed due to certain necessity then these techniques would have the same status for them. For those who

¹ Report published in time (London) as reported in Dawat 20-11-1988

permit *Azl* even without the condition of necessity then for such jurists and *ulema* these modern techniques or contraceptives would be permissible.

From one of the query posed to Allama Ibn Taimiya, who died in 728H (i.e. 1448 A.D), it becomes obvious because women practiced similar techniques during his time. This frank spokesperson of Islam has not declared it explicitly *Haram* or non-permissible. Further, after making reference to various views of this great scholar, *ulema* have expressed his thought that it is dominant. This whole inquisition should better be reproduced here in the words of Ibn Taimiya himself for clear understanding on the issue. He was asked:

"وسئل رحمه الله عن امرأة تضع معها دواء عند
المجامعة تمنع بذلك نفوذ المنى في مجاري الحبل
فهل ذلك جائز حلال أم لا؟"

"You have been approached to know whether the practice of a woman would be permissible or forbidden who keeps some medicine within her at the time of intercourse so that the semen may not pass through its path leading to prevention of pregnancy?"¹

And, another question was asked about prayers and fast of such a woman after taking due bath. And, whether it would be permissible for her to offer prayers, and keep fast after taking due bath with the apprehension that some of the medicine would still be present inside her?² That is:

¹ Fatawa Ibn Taimiya 32:271.

² *Ibid.*

"وهل إذا بقى ذلك الدواء معها بعد الجماع ولم يخرج يجوز لها الصلاة والصوم بعد الغسل أم لا؟"
If a woman removes the effect of insemination, just after an intercourse, by douching her internal parts with water or any medicine, then will it be permissible for her to offer prayers or keep fast even if something remains inside her body?³

Allama Taimiya gave one answer to this query, which removes the confusion on the issue if some woman makes use of modern contraceptives. He said:

"فأجاب: أما صومها وصلاتها فصحيحة وإن كان ذلك الدواء في جوفها، وأما جواز ذلك ففيه نزاع بين العلماء، والأحوط أنه لا يفعل، والله أعلم"
So long as her prayers and fast are concerned it would be all right even if some medicine may still be present inside her body. So long as the permissibility of its use is concerned there is a difference of opinion among religious scholars, therefore, a cautious stand could be that she should not do so. God knows better.¹

Allama Ibn Abidin Shami also permits closure of the vaginal path by a woman somehow.² The contemporary corruption (*fasad*) has been considered one of the excuses for using such contraceptive methods.³

Surgical Methods

¹ Fatawa Mentioned 32:272.

² Raddul Muhtar ma al-Durri al-Mukhtar 2/522

³ Radd ul-Muhtar, *Ibid*.

In the present time, surgical methods are being used for permanent or longer prevention of conception. In this regard, vasectomy and tubectomy are being applied for men and women respectively. The surgical operation of man is comparatively easier.¹ Under this technique the tubes carrying semen or ovum inside human body are permanently cut off or knotted to prevent their journey to uterus where fertilisation takes place. The advanced technique of tubectomy is called as leproscopy, which is a permanent and long lasting method of birth control, generally adopted by people who are reluctant to increase the size of their existing family. Baring some exceptional cases, male and female become incapable of producing children as a consequence of these techniques. Contrary to the common belief, such operations do not reduce sexual pleasure, rather weaker people have been found to become amazingly stronger after such an operation.²

According to one group of *ulema* in the Shafai school of thought, husband is allowed to practice *AzI* as long as he wishes without fulfilling the condition of the permission of free woman, i.e. his wife. Imam Ghazali also believes in it. As has been discussed at length in the foregoing passages, this is a more acceptable opinion to the later scholars of the school.³ For this group of Shafaites, it would be permissible for a woman to remove foetus inside her womb before it acquires soul (i.e. within four months from the conception). While conjecturing on similar lines it has been said that the opinion of Shafaites could be known about the surgical method for preventing a pregnancy. However, the issue is related to the Islamic decree regarding a woman who acquires permanent incapability of pregnancy. In this regard, Hafiz Ibn Hajar, after narrating the negative opinion of the later Shafaite scholars, says that if these people allow non-conditional *AzI*, then it is not understandable that why they

¹ Modern birth control, p 116.

² *Ibid.*

³ Fath ul-Bari 9:247.

are against adoption of permanent prevention of pregnancy. In the words of Ibn Hajar:

"ويلتحق بهذه المسئلة تعاطي المرأة ما يقطع الحبل من أصله وقد أفتى بعض متأخري الشافعية بالمنع وهو مشكل على قولهم بإباحة العزل مطلقاً والله أعلم".

“This is also related with this issue that if a woman applies such a technique which permanently obliterates conception by her, then Imam Shafai has given a decree disallowing such an action. But, these scholars are in favour of non-conditional *Azl*, so it seems very difficult from their point of view. God knows better.”¹

From this discussion of Hafiz Ibn Hajar Shafai, there is permission for tubectomy, and the vasectomy may be guessed on the basis of this.

Abortion

Technically called dilatation and curettage (D&C), is the method of removing foetus by surgery, which is commonly known as abortion. There are different stages of this clinical termination of pregnancy. Firstly, when the conception is established, and it is removed within a few months from the cessation of menstruation. If there is no danger to the health of the woman and a pious doctor does not recommend it then it is a sin. Imam Ghazali who has the most liberal opinion regarding *Azl* also considers it a sin, crime and offense:

¹ Fath ul-Bari, 9:247.

"وأول مراتب الوجود أن تقع النطفة في الرحم
وتختلط بماء المرأة وتستعد لقبول الحياة وإفساد ذلك
جناية".

“The first stage of human existence is the one when the semen drops inside woman’s womb and joins her secretions (that is fertilisation takes place). This way it is prepared to accept life. Then it is forbidden to damage and spoil that (human stage).”¹

In the further stages, the progress in the foetal development would increase the degree of offense leading to abortion or the clinical termination of pregnancy. And, the worst situation would be the one when baby comes out live. Hence, he further states:

"فإن صارت مضغة وعلقة كانت الجناية افحش،
وان نفخ فيه الروح واستوت الخلقة ازدادت الجناية
تفاحشاً ومنتهى التفاحش في الجناية بمد الانفصال
حياً".

“Then if the newly conceived thing becomes a clot then this offense would be even more barbaric. And, when the spirit has been blown into it and the foetus assumes its proper shape then this barbarism would be even more pronounced. The ultimate degree of this human crime would be attained when, after abortion, the baby comes out live.”²

Then remains the question, what would be the status of the issue when the foetus becomes live inside mother’s womb or when the spirit is blown into it? According to the doyen of jurists Imam Hazrat Ali, this stage comes when all the seven stages, as

¹ Ehya ul uloomuddin 2:51.

² *Ibid.*

mentioned in the Qur'an, are over. It has been mentioned in *Surah Mo'amenoon* (23: 12- 14):

"ولقد خلقنا الإنسان من سلالة من طين، ثم جعلناه نطفة في قرار مكين، ثم خلقنا النطفة علقة فخلقنا العلقة مضغة فخلقنا المضغة عظاماً فكسونا العظام لحماً أنشأناه خلقاً آخر فتبارك الله أحسن الخالقين".
"Man We created from quintessence (of clay), then We placed him as (a drop of) sperm in a place of rest, firmly fixed, then We made the sperm into a clot of congealed blood, then of that clot We made a (foetus) lump, then We made of that lump bones and clothed the bones with flesh, then We developed out of it another creature."¹

The meaning of the last part of the verse that is "then, We developed out of it another creature", is that now the spirit has been blown in the foetus. Its destruction and damage after this stage means that it is committing the same crime which the ignorant Arabs were doing when they killed a newly born she-baby by burying her alive due to various motives such as poverty, social stigma, etc. Hence, Hazrat Ali recited the Verse (8) of *Surah Taqvir* after reciting the present verse in which it has been impressively said that the girl buried alive would be a witness against this crime in hereafter:

"وإذا المؤودة سُئلت، بأىّ ذنب قتلت".
"And, when the girl will be asked for what crime she was killed?"²

All the above said stages are completed inside womb of the mother by the time foetus is 40-45 days old, as has been made

¹ Surah Muminoon 12-14.

² Surah Takvir 8-9, Ehyaul Uloomiddin 2:52.

apparent in various *Ahadith* quoted in this regard. According to these *Ahadith*, when these seven stages are completed then the angels come to the foetus, blow spirit into it and finally place the fate of the new person on record.¹

The last liberal view that has been expressed regarding abortion, while guessing the issue on the basis of conditional permission of *Azl*, is regarding the foetal stage between conception and acquiring of soul. Although Ibn Hajar propounds his opinion in this regard in between the extreme opinions, the matter is very sensitive. Hence, it would be proper to present the whole discussion in the words of this great scholar who writes after elaborating on various issues pertaining to *Azl* that:

"وينتزع من حكم العزل معالجة المرأة إسقاط
النطفة قبل نفخ الروح لمن قال بالمنع هناك ففي هذه
أولى ومن قال بالجواز يمكن أن يلتحق به هذا
ويمكن أن يفرق بأنه أشد، لأن العزل لم يقع فيه
تعاطي السبب ومعالجة السقط تقع بعد تعاطي
السبب".

“The case similar to *Azl* is the one in which a woman attempts to make semen ineffective before the foetus acquires life. Those who disapprove of *Azl* would certainly see this as even more grave and for those who admits *Azl* it would be almost a similar case. It should be that distinction may be made in both the cases that the latter one is more serious since the *Azl* is free from the potentiality of

¹ "باب كيفية خلق الأدمي في بطن أمه وكتابه Muslim vol. 8, the Book of Fate, Chapter 3:97, 4:7, See in detail "ورزقه وأجله وعمله وشقاوته وسعادته". Also Musnad Ahmad 3:97, 4:7, See in detail "Takhliq -e- Insani ke Marahil, In the light of Qur'an, Hadith and Science".

birth whereas abortion is done after acquiring such a potentiality.”¹

The author of Durri Mukhtar gives permission for the termination of unwanted pregnancy up to the period of four months. So a woman can terminate an unwanted foetus up to four months even without the permission of her husband.² However, the proper approach should only be the one as adopted by Abidin Shami who says that it should be appropriate if the period of 120 days is considered as the period culminating into the acquiring of soul by the foetus. Otherwise, so long as the period of birth is concerned it begins quite before it. If a woman is intending to terminate the pregnancy before the spirit has been blown in the foetus then her action may be said odious (*Makruh*) because:

"فإن الماء بعد ما وقع في الرحم مآلة الحياة فيكون له حكم الحياة".

“When the drops of male gets into female then the life begins and, hence, the case would be judged as that of a living being.”³

Contractive Techniques: The Right Approach

The last limit of the permission for prevention of conception and pregnancy through classical or modern means present in the *Shariah* has been discussed here in detail. While keeping in mind all this detail when we consider the present Muslim society then the issue may be found on two opposite extremes. On the one side may be found that traditional section of religious Muslims who consider any sort of contraceptive

¹ Fath ul-Bari 9:249.

² Al-Durri al-Mukhtar with Radd ul- Muhtar 2:522.

³ Radd ul-Muhtar with al-Durri al-Mukhtar 2:522.

method as wrong and tabooed, whereas on the other side there is a section of modern minded Muslims who hardly bothers for any restriction for all sorts of means leading to birth control and abortion.

The motive behind the ever-increasing measures of birth control happens to be the intention of population control and to save the civilised world from the problems of over population emanating from the false fear of impoverishment of resources, poverty, etc. Not only the experts of sociology and economics but the sexologists also agree to this. In this regard, the viewpoint of Imam Ghazali, which seems to be more considerate and balanced, should be kept in view, who considers it a proper motive on individual basis to adopt means of birth control. From this, it becomes evident that there might be some way out to permit a Muslim couple to adopt different modern techniques, to defer pregnancy after mutual agreement, which are apparently similar to the classical method of *Azl* as far as the results are concerned. The last limit of which may be this, which the woman may get the pregnancy terminated within 2-3 weeks after knowing about the conception and within the period when the spirit is blown into the foetus.

Although the author is giving this relaxation with a very skeptic mind, the reasons for which have already been discussed. Islam does not appreciate unreasonable pressure and restriction, and, the relaxation and moderation in Islam is a great gift of Allah the Almighty and He likes strict Islamic life as well as an easy Islamic life¹, while according due relaxations in this regard. It is not expected from a Muslim that he would intervene in the process of making of a new human being once the spirit has been blown in the foetus when he has a choice to plan the thing in advance while considering his compelling situation by using contraceptives to the extent permitted by the *Shariah*. It is

¹ *Hadith* narrated by Abdullah bin Umar and reported in Ahmad and Baihqi.

because a Muslim is always God-fearing, one who remembers his meeting with Him in hereafter and that he would be answerable for each of his deeds in this world.

While discussing earlier, regarding the objectives of marriage, it has been made evident that there are basically two motives behind marriage as ordained by Islam, i.e.

- a) Preservation and continuation of human race and
- b) The sexual delight.

Therefore, the prime objective of marriage in Islam is the conservation of human race, rather, the growth of human population. The Prophet (peace be upon him) has been reported in a *Hadith* as encouraging preference to marriage with a woman from whom more children could be expected.¹

In several other *Ahadith* he has explained its spiritual benefits that in the hereafter the strength of Muslim *Ummah* would be a matter of pride and satisfaction for the Prophet (peace be upon him).² The process of birth control creates hindrance in the achievement of this objective of marriage. The dislike of *Azl* by the Prophet (peace be upon him) during the period of Qur'anic revelation, as has been explained earlier, is understandable in the light of this prime objective of marriage. His dislike was so pronounced that in one *Hadith* he is narrated to be taking it equal to burial of girl child alive by the Arabs before the advent of Islam. He says:

"ذلك الواد الخفي"

"This is a minor kind of burying some one live."³

¹ Abu Dawood, Vol. 1, the Book of Marriage, Chapter "باب في تزويج الأبيكار".

² See in detail "The Purpose of Marriage In Islam" (Urdu).

³ Muslim, Vol 4, the Book of Marriage, Chapter "باب جواز اللبلة وهي وطأ المرضع وكراهة العزل"

However, since sexual pleasure is in itself an expressed objective of marriage in Islam, as has been explained above, therefore, even the enfeebled coitus, in which a Muslim is trying to live a pious Islamic life and fulfilling the objective of a sublime marriage bond, has a scope in Islamic teachings. Withdrawal and this sort of modern contraceptives prevent conception to a great extent, hence, they may be considered as developed means of enfeebled coitus. Since, in this there is a fulfillment of the second important objective of Islamic marriage, a Muslim couple can rightly enjoy the pleasure and love of Allah in abiding by His dictates while agreeing and taking recourse to such techniques. The sexual relations of a couple adopting long term or permanent stoppage of conception are tantamount to the marriage relation of a barren couple, in which both or any one partner is permanently disqualified to give birth to a child. The Qur'an itself has referred to one such barren couple and have directly or indirectly made note on their enfeebled sexual relations.

Sura Shura 49-59

"لله ملك السموات والأرض يخلق ما يشاء يهب لمن يشاء إناثاً ويهب لمن يشاء الذكور أو يزوجهم ذكراً وإناثاً ويجعل من يشاء عقيماً إنه عليم قدير".
 "To Allah belongs the dominion of the heavens and the earth. He creates what He wills. He bestows (children) male of female according to His will. Or He bestows both males and females, and He leaves barren whom He will."¹

In these verses the issue under discussion has been referred to in such a way that it hints about very warm sexual relations of a

¹ Qur'an 42: 49-50.

barren couple. The statement is this that Allah bestows sons to whom so He wishes and daughters to whom so He wishes, and bestows some with both sons and daughters and there might be some deprived of them both being barren. This is a natural outcome of this statement that all sorts of sexual relations may lead to different results including the one in each the couples are deprived of any real outcome of their sexual relations except the coital pleasure. After passing a certain period without any issue the marriage partners realise the fact about their incapability thereof. The medical science provides latest techniques to check any deficiency in this regard. However, in spite of such investigations, the Qur'an does not repudiate or feel some thing despicable regarding the sexual life of such a barren couple or consider it objectionable from any angle. The enfeebled and very active sexual relations with the use of techniques of permanent contraception or conception at all with barren sexual relations may be conjectured almost similar to those sexual relations in which to the degree a barren couple is still hopeful of possible conception. This possibility is much more in case of the modern contraceptives.

Further to this, there is one more aspect of birth control techniques in the context of present time, which attracts serious thought. Different kinds of social and geographical factors are leading to exponential rise of human population nowadays. According to some experts, the human population on the earth would be doubled in the next century out of which 90 per cent population would be from the poor and developing countries. Islam is not against advanced thinking and planning of future situations. The problems faced by a family, due to increased number of members, are much more pronounced at the governmental level. An Islamic state can take measures for family planning and control of population in spite of its being God-fearing and having belief in *Akhirah*.

While keeping away from abortion and means of permanent contraception, a Muslim government can make provision of permissible methods in its planning and should not necessarily adopt similar techniques developed and used by non-Muslim governments. According to one Indian expert, the government data indicate that 37 per cent people of the country are living below the poverty line.¹ Whereas according to a WHO report around 13 million children below the age of five years succumb to various diseases.² Such kind of estimates is generally made about the poor and developing countries. The Muslims who are passing through grave the situation like the one obtained presently in various Muslim countries, if take a recourse to birth control techniques (in the limits above discussed) to save their peoples from the problems arising due to over population then they should be allowed to take the advantage of relaxations provided by the *Shariah*, specially in the situation of a hostile country, staying wherein has been considered as an excuse for adoption of contraceptives.

Another considerable aspect of the use of contraceptives emanates from the priorities of an individual due to certain circumstances. It has been said that the population is growing with a high rate in the present time. The present situation is like this: Whereas the procreative ability of a woman may be considered up to the age of 40-45 years, she gets pregnant in a normal sexual life on the average within six months (after a delivery). Obviously, in the absence of any contraception there will be an addition of new child in a family in every one and half years. In this situation, it is very difficult to fulfill the religious and other responsibilities without affecting some other aspects of life.

¹ Daily Qaumi Awaz, Delhi, 26 Dec. 1998

² *Ibid*, 27 Dec. 1998.

Therefore, unrestricted birth would make her entire active life consumed in rearing children while affecting her health and spirit to discharge Islamic responsibilities. The intension to increase the population of *Ummah* may be appreciable. But, earning through genuine means is made obligatory upon man, whatever profession one chooses to earn necessary livelihood, one needs spare time from his house-hold responsibilities. Then, if a person is caught in a difficult situation due to his action categorised by the *Shariah* as appreciable (*musthasan*) and fails to fulfill his obligations, then it would be difficult to find any proof in the *Shariah* in favour of such an attitude.

The Qur`an has declared that the suckling period for child is two years. If a second child takes birth during this period then this would affect his life in such a way that it would be difficult to compensate that loss even during his entire life. There is a term *ghila* used for the approaching of husband to his wife during this period. The Prophet has clearly discouraged people to do so and have declared it tantamount to secretly killing of ones own offspring. Asma bint Zaid narrates that she had heard the Prophet (peace be upon him) saying as:

"لا تقتلوا أولادكم سرا"

"Do not kill you children secretly."

Then he explained the reason for this:

"فإن الخيل يدرك الفارس فيد عثرة عن فرسه".

"Because the effect of deprivation of milk shall be expressed in a horse rider, such a man would be thrown from the back of the horse (that means it would cause inherent weakness from the suckling period onwards)."¹

¹ Abu Dawood, Vol.2, the Book of Tib, Chapter, "باب في الغيل", Ibn Maja أبواب "النكاح باب الغيل", Also Musnad Ahmad 6:453, 457, 458.

Later on, the Prophet (peace be upon him) changed his opinion when he came to know that in some nations this was a usual practice and it did not harm the children in any way. Nevertheless, the purpose and motive mentioned by the Prophet in this *Hadith* is interesting. Obviously, where it is difficult to compensate from other means and the harm of *ghila* to the new baby becomes real. Then, to keep away from wife during the suckling period or to adopt measures having the same results would be preferable and appreciable.

Modern researches have proved that there is no alternative to mother's milk for a baby. In the second category, there is only one compensation possible in the form of rich diet and highly potential nutrition if economic resources allow a father to do so. Moreover, he could afford a nurse and maid to help in rearing the baby. Those parents who do not enjoy such a prosperity, whereas the majority of developing and third world countries may have people like this, the policy of birth gap between two children would be the only right course. However, the use of contraceptives should be limited up to the pre-conception stage only. Once the conception has materialised due to divine plan then the further growth of foetus should not be escaped by abortion or termination of pregnancy.

Where there is no real purpose of hindrance, and obligation towards children could be fulfilled without only difficulty, then the policy of growth of *Ummah* could only be preferred and appreciated. In various *Ahadith* the Prophet (peace be upon him) has been quoted as saying in favour of increase in the number of offspring and where it is not affecting fulfillment of any Islamic obligation, then the policy of multiplication of population should be adopted without hesitation and there is no need to be influenced by the contemporary propaganda against growth of population. As has already been explained, Islam has provided religious and temporal motives for increase in the offspring.

When these imperatives are properly taken and thus the multiplicity of offspring is not going to affect any Islamic obligation, then the *Ummah* should adopt this way of achieving the enshrined results without getting apologetic or perplexed due to propaganda against it.

However, there is one situation in which the adoption of contraceptive means would become not only appreciable, rather obligatory and that is when there is deterioration of health of a wife and her life is in danger and a religious, God-fearing doctor endorses its dire need and that she would not be in a position to bear the burden of additional child up to a certain period.

If her husband were not in a position to completely remain abstained from her, then the use of contraceptives would become obligatory. This is a moral responsibility and the consequence of love to his wife that he should not affect further conception to her ailing wife and perhaps, it is a legal right of a woman that she should not allow any conception during the period of her recovery. If a husband is not permitted to practice *Azl* without the permission of his wife then he cannot be permitted as well to make his wife pregnant against her will on health reasons. If so compelled, a wife can sue her husband for this sort of atrocity and get safety from the government

Appendix-1

Resolutions of the Seminar on Transplantation of Organs

After taking into account all the relevant aspects and a thorough and frank discussion on the issue of transplantation of organs, the participants of the Seminar approve of the following suggestions:

“The Transplantation of Organs” is a very important medical issue today. In this method of medical treatment, the significance of method and innovations are increasing day by day. This issue is basically related to preservation of human dignity on the one hand, that the use of human organs and body parts seems to be against the sense of human dignity and respect, and, on the other hand, transplantation of organs acquires indispensability for some patients and by using this technique it is apparently felt that life of a human being could be saved by this method of treatment or its any benefit to man may be regenerated. And, the *Shariah* has given sanctions while considering any human benefit in view. Keeping both the aspects of the issue in view, it becomes essential that *ulema* and jurists should undertake the issue in the interest of humanity.

While considering various aspects of the issue for thorough discussion the seminarians have arrived on the following agreed resolutions:

1. The use of non-animal (i.e. artificial) organs in human body is permissible for the purpose of treatment.

2. The organs of slaughterable animals are also permissible.
3. In the apprehension of loss of a human life or damage of any essential organ, that means, if that particular organ is not provided to a needy person then he might die due to that deprivation or a certain organ would be damaged and the desired organ could be provided for grafting from the animals either permitted by Islam for human eating or otherwise slaughtered in an Islamic way, although from non-slaughterable animals, then its grafting would be permissible.
4. If there is no acute necessity for using organs of a swine to save a human life or an essential human organ then its use is not permissible.

This assembly feels that it is highly required to take into account all the complexities, benefits and injuries, impacts and factors, effects and consequences, economic and social repercussions, and also the juridical opinions, commandments and principles of the *Shariah* for any judgement on the issue.

In the wake of this situation, the seminar agrees on the formation of the following committee to recommend its suggestions after thoroughly considering various legal, social, economic and juridical complexities pertaining to the issue for discussion in the next seminar.

It shall be the responsibility of this committee to analyse and scrutinise various write-ups or verbal deliberations made in this seminar and also the opinions expressed in different books of *fatawa* and to prepare questionnaire for future discussion while taking into consideration various kinds of social and economic impact of the issue so that all the consequences of the issue should become evident. Furthermore, the committee should seek response of *ulema* and jurists (*fuqha*) on the opinions, point of views and

their logics, as expressed in the present seminar, through a questionnaire. This committee is empowered to co-opt other experts if so required.

Committee:

1. Mufti Habibur Rahman, Hyderabad
2. Maulana Abdullah Jolam
3. Maulana Khalid Saifullah Rahmani
4. Maulana Mujibullah Nadvi
5. Maulana Ateeq Ahmad Qasmi
6. One Legal Expert
7. One Sociologist
8. One Economist

Appendix-2

Resolutions of the Seminar on Birth Control

The participants of this seminar have agreed upon the following suggestions regarding birth control, after consideration and evaluation of all the relevant aspects of the issue.

1. Any act, which intends to disturb or contain the perpetuity of human race, is contrary to the basic Islamic concepts.
2. The negation of responsibility towards offspring or any aversion to having children due to current fashion, business engagement, occupation and interest in social or political activities cannot be accepted by the Islamic Shariah in any case.
3. Those women, who engage themselves in any employment for the sake of elevating standard of life or for procuring more and more wealth, really forget the nascent and basic purpose of their creation. This is totally against Islam, to limit a family with these motives.
4. If there is an apprehension that the upbringing, nursing, and growth of the existing child is likely to hamper due to pregnancy, then it will be permissible to take recourse to temporary birth control measures for spacing between two births.
5. The option of permanent contraception for men is not appropriate in any case. The permanent measures of contraception are also forbidden for women with the exception of only one situation that, according to a

competent and dependable physician life of the woman will be endangered by further conception or it may cause any severe loss to her. In such a situation, she may be operated for acquiring permanent disability to procreate.

6. The recourse to measures and use of medicines, intended for temporary contraception is also generally not permissible.
7. In certain exceptional cases the adoption of contraceptive measures and the use of medicines for temporary contraception stands permissible. For instance: If the infirmity of a woman incapacitates her to bear the burden of conception or delivery and there is a strong apprehension of her fatal condition thereby, the practice of a couple for temporary contraception to avoid conception will be permissible.